

ORDINANCE
OF THE STATES OF DELIBERATION

ENTITLED

The Seafarer Recruitment and Placement Services
(Maritime Labour Convention 2006) (Sark) Ordinance,
2015 *

[CONSOLIDATED TEXT]

NOTE

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* No. XLIII of 2015; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018 (Sark Ordinance No. XIII of 2018).

ORDINANCE

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The Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Sark) Ordinance, 2015

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(Made on 30th October, 2015.)

**The Seafarer Recruitment and Placement Services
(Maritime Labour Convention 2006) (Sark) Ordinance,
2015**

THE STATES, in pursuance of their Resolution of the 28th January, 2015^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012^b, hereby order: –

PART 1
OBJECTIVE

Objective of the Ordinance.

1. (1) The objective of this Ordinance is to establish a system of regulation of agencies and employment businesses in Sark with the purpose of protecting seafarers and satisfying the requirements of Regulation 1.4 of the Maritime Labour Convention 2006 (the "**Convention**"), and this Ordinance shall be construed accordingly.

(2) The [Committee for Employment & Social Security] shall be the competent authority of Sark for the purposes of the Convention.

NOTES

In section 1, the words in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance,

a Article VII of Billet d'État No. I of 2015.

b Order in Council No. V of 2013.

2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

PART 2

REGISTRATION AND INSPECTION

General restriction on agencies and employment businesses.

2. Subject to the provisions of this Ordinance, no agency or employment business may introduce or supply a seafarer to a hirer or hold itself out as being capable of so doing unless it is registered by the [Committee for Employment & Social Security] under this Ordinance.

NOTE

In section 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Application for registration.

3. (1) An agency or employment business required to be registered under section 2 shall apply to the [Committee for Employment & Social Security] for registration.

(2) An application for registration shall be made in such form and manner, and accompanied by a non-refundable application fee of such amount, as the [Committee for Employment & Social Security] may prescribe by regulations.

(3) On receipt of an application for registration and at any time thereafter the [Committee for Employment & Social Security] may by notice in writing require the applicant, or any person who is or is to be a director, controller, partner, or senior officer of the applicant, to provide such additional information and documents as the [Committee for Employment & Social Security] may reasonably require for the purpose of determining the application.

(4) The [Committee for Employment & Social Security]'s requirements under subsection (3) may differ as between different applications.

(5) An application under this section may be withdrawn by notice in writing to the [Committee for Employment & Social Security] at any time before it is determined.

(6) If prior to the determination of the application there is any change to any of the information supplied to the [Committee for Employment & Social Security] by or on behalf of an applicant for the purposes of an application for registration, the applicant shall inform the [Committee for Employment & Social Security], before the application is determined, of the change; and a failure to do so is, without prejudice to the generality of any other provision of this Ordinance, a ground for the refusal or revocation of registration.

NOTE

In section 3, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Grant or refusal of registration.

4. (1) Subject to subsection (2), on receipt by the [Committee for Employment & Social Security] of an application under section 3, an officer appointed under section 23(1) ("**an officer**") or an approved inspector shall inspect the agency or employment business for the purpose of ascertaining whether it complies with the requirements of Regulation 1.4 of the Convention, following which the [Committee for Employment & Social Security] shall –

- (a) grant the application, or
- (b) refuse the application,

and shall serve on the applicant notice in writing of the decision.

(2) An agency or employment business need not be inspected under subsection (1) if the [Committee for Employment & Social Security] is satisfied that it has been audited within the preceding twelve months by an approved inspector, for the purpose of assessing its compliance with the requirements of Regulation 1.4 of the Convention.

(3) The [Committee for Employment & Social Security] may refuse an application for registration only if –

- (a) the application is not accompanied by the application fee prescribed in regulations made under section 3(2), or the application is otherwise not made in accordance with the provisions of section 3,
- (b) it appears to the [Committee for Employment & Social Security] that any information, statement or document provided in support of the application is false, misleading, deceptive or inaccurate, or

- (c) it appears to the [Committee for Employment & Social Security], as a result of an inspection under subsection (1), an audit under subsection (2), or otherwise, that the agency or employment business in question does not comply with one or more of the requirements of Regulation 1.4 of the Convention.

(4) In this Ordinance, an "**approved inspector**" means a person, body or organisation approved for the purposes of this Ordinance by the [Committee for Employment & Social Security].

NOTE

In section 4, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Certificate of registration.

5. (1) On granting an application for registration of an agency or employment business under section 4, the [Committee for Employment & Social Security] shall issue to the applicant a certificate of registration in such form and containing such information as the [Committee for Employment & Social Security] may determine.

(2) An agency or employment business shall immediately deliver its certificate of registration to the [Committee for Employment & Social Security] –

- (a) whenever required to do so by the [Committee for Employment & Social Security], and

(b) on the revocation, suspension or surrender of its registration.

(3) Except when required by or under subsection (2) to deliver its certificate of registration to the [Committee for Employment & Social Security], an agency or employment business registered under this Ordinance (a "**registered agency or employment business**") shall, at its principal place of business in the Bailiwick, at all times during ordinary business hours, make the certificate available to any person reasonably requesting to see it.

(4) A certificate of registration remains, at all times, the property of the [Committee for Employment & Social Security].

NOTE

In section 5, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Annual inspection.

6. An officer or an approved inspector shall inspect a registered agency or employment business within the period of ten to twelve months after the previous inspection or audit (as the case may be), for the purpose of ascertaining whether it continues to comply with the requirements of Part 3.

Period of effectiveness of registration, and general requirements.

7. (1) Subject to the provisions of this Part, the registration of an agency or employment business shall remain effective, and a certificate issued under section 5 shall remain valid, for five years from the date of registration or until the

registration is revoked or surrendered under section 10 or 11 (as the case may be), whichever is the sooner.

(2) An annual fee, of such amount as may be prescribed by regulations of the [Committee for Employment & Social Security], shall be payable, on or before such date in each year as may be so prescribed, in respect of each registered agency or employment business.

(3) A registered agency or employment business must inform the [Committee for Employment & Social Security] of any change occurring to the information supplied to the [Committee for Employment & Social Security] for the purposes of its application for registration under section 3(2) or to any information supplied to the [Committee for Employment & Social Security] thereafter –

- (a) prior to the occurrence of such a change, or
- (b) where a change is sudden or unexpected, promptly after such change occurs,

and for the purposes of this subsection a change to such information includes the intention to cease being an agency or employment business to which this Ordinance applies.

NOTE

In section 7, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Application to renew registration.

8. (1) The [Committee for Employment & Social Security] may renew the registration of a registered agency or employment business on an application being made to it under this section at any time within a three month period before the expiry of the registration in question.

(2) The provisions of sections 3, 4(1), 4(3), 4(4) and 5 apply to an application to renew registration under subsection (1) as they apply to an application for registration under section 3, and regulations under section 3(2) may make specific provision, and prescribe a specific fee, in relation to applications to renew registration.

(3) The provisions of sections 6 and 7, and this section, apply to an agency or employment business the registration of which has been renewed, as they apply to an agency or employment business which has been registered for the first time.

NOTE

In section 8, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Suspension of registration.

9. (1) The [Committee for Employment & Social Security] may, by notice in writing served on an agency or employment business, suspend its registration –

- (a) at the request of the agency or employment business concerned, or
- (b) in any case in which it appears to the [Committee for

Employment & Social Security] that it has power, under the provisions of section 10, to revoke the registration.

(2) The suspension of a registration in pursuance of subsection (1) shall be –

- (a) for a period specified by the [Committee for Employment & Social Security],
- (b) until the occurrence of an event so specified, or
- (c) until any prohibitions or requirements so specified are complied with to the satisfaction of the [Committee for Employment & Social Security].

(3) For the avoidance of doubt, during a period of suspension of a registration in pursuance of subsection (1) the agency or employment business may not carry on, or hold itself out as carrying on, the recruitment and placement of seafarers; but for the avoidance of doubt, this subsection has no effect in respect of employment agreements in existence when the relevant notice is served under subsection (1).

(4) Where the [Committee for Employment & Social Security] decides, otherwise than with the agreement of the agency or employment business concerned, to suspend a registration, the [Committee for Employment & Social Security] shall serve upon it notice in writing of the decision.

NOTE

In section 9, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule

1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Revocation of registration.

10. (1) The [Committee for Employment & Social Security] may revoke the registration held by an agency or employment business if it appears to the [Committee for Employment & Social Security] that –

- (a) the [Committee for Employment & Social Security] has been provided with false, misleading, deceptive or inaccurate information for the purposes of any provision of, or made under, this Ordinance –
 - (i) by or on behalf of the agency or employment business, or
 - (ii) by or on behalf of a person who is or is to be a director, controller, partner, or senior officer of the agency or employment business in question,
- (b) the agency or employment business has not been inspected as required under section 6,
- (c) the relevant annual fee prescribed in regulations made under section 7(2) has not been paid, or
- (d) the agency or employment business has not complied with any of the requirements of Part 3, whether it so appears as a result of an annual inspection under section 6 or otherwise.

(2) Where the [Committee for Employment & Social Security] decides to revoke a registration, the [Committee for Employment & Social Security] shall serve upon the agency or employment business concerned notice in writing of the decision.

(3) A decision of the [Committee for Employment & Social Security] to revoke a registration shall not have effect until the end of the period within which, under Part 5, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

(4) For the avoidance of doubt, a decision of the [Committee for Employment & Social Security] to revoke a registration shall have no effect in respect of employment agreements in existence when the relevant notice is served under subsection (2).

NOTE

In section 10, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Surrender of registration.

11. An agency or employment business may surrender its registration by notice in writing served upon the [Committee for Employment & Social Security]; and for the avoidance of doubt, a decision of an agency or employment business to surrender its registration shall have no effect in respect of employment agreements in existence when the relevant notice is served under this section.

NOTE

In section 11, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Crew administration companies.

12. (1) When an employment business ("EB") receives crew administration services from a company ("X Ltd"), if the conditions set out in subsection (2) are met –

- (a) X Ltd shall be deemed to be an employment business for the purposes of this Ordinance if it is neither an agency nor an employment business,
- (b) the obligations of agencies and employment businesses under sections 3 to 8 shall be deemed to be satisfied in respect of EB if they are satisfied in respect of X Ltd, and fees under those sections shall be payable by and in respect of X Ltd, and only X Ltd, and
- (c) a certificate of registration issued under section 5 in respect of X Ltd shall be in such form, and contain such information relating both to X Ltd and EB, as the [Committee for Employment & Social Security] may determine.

(2) The conditions are that a director or senior officer of X Ltd must, on behalf of EB, declare to the [Committee for Employment & Social Security], officer or approved inspector (as the case may be) at the time of the application or inspection that EB is relying on the provisions of this section, and provide the [Committee for Employment & Social Security], officer or approved

inspector with such further information relating to EB as it or he requires.

(3) Notwithstanding the provisions of this section, the [Committee for Employment & Social Security], officer or approved inspector may inspect (or require to be inspected, as the case may be), and the [Committee for Employment & Social Security] may require to be registered, any employment business if it or he considers it necessary to do so for the purposes of this Ordinance; and in such circumstances fees under this Ordinance shall be payable in respect of that employment business as if this section did not apply.

(4) For the avoidance of doubt, when this section applies –

(a) the [Committee for Employment & Social Security] may suspend the registration of X Ltd under section 9 and revoke the registration of X Ltd under section 10, and X Ltd may surrender its registration under section 11, and

(b) in any of the circumstances described in paragraph (a), EB may not carry on, or hold itself out as carrying on, the recruitment and placement of seafarers, and commits an offence under section 25 if it does so; but this paragraph has no effect in respect of employment agreements in existence when the relevant notice is served.

(5) In this section, "**crew administration services**" includes record keeping and monitoring services, services relating to the checking of crew qualifications, and services relating to complaints and disciplinary matters.

(6) The [Committee for Employment & Social Security] may issue

guidance in relation to the application of this section.

(7) The [Committee for Employment & Social Security] may amend subsections (1) to (4) by regulations, for the purpose of –

- (a) ensuring that the requirements of Regulation 1.4 of the Convention continue to be satisfied in Sark,
- (b) ensuring that this Ordinance does not impose inappropriate costs and administrative burdens on employment businesses, or
- (c) both (a) and (b).

NOTE

In section 12, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

PART 3

**PROHIBITIONS AND RESTRICTIONS ON, AND OBLIGATIONS OWED BY,
AGENCIES AND EMPLOYMENT BUSINESSES**

Prohibition on use of blacklists, etc.

13. (1) Subject to section 14, no agency or employment business shall compile, use, supply or sell a prohibited list.

(2) For the purposes of this Ordinance a "**prohibited list**" is a list which contains details of seafarers and is compiled with a view to being used by

employers, agencies or employment businesses for the purposes of discrimination in relation to the recruitment or treatment of seafarers; and for the purposes of this section, "seafarer" includes a person who is currently, or has in the past, engaged in maritime work, whether or not he is currently seeking such work.

(3) For the purposes of this Ordinance "**discrimination**" means treating a seafarer less favourably on grounds of trade union membership, trade union activities, or any other ground that is not related to that seafarer's qualifications, skills and experience.

(4) The [Committee for Employment & Social Security] may by regulations prescribe other means or mechanisms intended to prevent or deter seafarers from gaining maritime work for which they are qualified, that agencies and employment businesses are prohibited from using.

NOTE

In section 13, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Exceptions to prohibition on use of blacklists.

14. (1) An agency or employment business does not contravene section 13 in the following cases.

(2) The first case is where an agency or employment business supplies a prohibited list, but –

- (a) does not know it is supplying a prohibited list, and
- (b) could not be reasonably expected to know that it is

supplying a prohibited list.

(3) The second case is where an agency or employment business compiles, uses or supplies a prohibited list, but –

- (a) the sole purpose of so doing is to make known a contravention of section 13 or the possibility of such a contravention,
- (b) no information in relation to a person whose details are included in the prohibited list is published without the consent of that person, and
- (c) in all the circumstances compiling, using or supplying the prohibited list is justified in the public interest.

(4) The third case is where an agency or employment business compiles, uses, sells or supplies a prohibited list, but the sole purpose of so doing is to apply a requirement either that a person may not be considered for employment unless that person has experience or knowledge of trade union matters, and in all the circumstances it is reasonable to apply such a requirement.

(5) The fourth case is where an agency or employment business compiles, uses, sells or supplies a prohibited list, but the compilation, use, sale or supply of the prohibited list is required or authorised –

- (a) under an enactment,
- (b) by any rule of law, or
- (c) by an order of the court.

(6) The fifth case is where an agency or employment business uses or supplies a prohibited list –

- (a) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings), or
- (b) for the purpose of giving or obtaining legal advice, where the use or supply is necessary in order to determine whether this Ordinance has been, is being or will be complied with.

Restriction on detrimental action relating to seafarers working elsewhere.

15. (1) An agency or employment business may not (whether by the inclusion of a term in a contract with a relevant seafarer or otherwise) –

- (a) subject or threaten to subject a relevant seafarer to any detriment on the ground that –
 - (i) the relevant seafarer has terminated or given notice to terminate any contract between the seafarer and the agency or employment business, or
 - (ii) in the case of an employment business, the relevant seafarer has taken up or proposes to take up employment with any other person, or
- (b) require the relevant seafarer to notify the agency or employment business, or any person with whom it is

connected, of the identity of any future employer of the relevant seafarer.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of subsection (1)(a) –

- (a) the loss of any benefits to which the relevant seafarer might have become entitled had he not terminated the contract,
- (b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant seafarer to perform work he has agreed to perform, or
- (c) a requirement in a contract with the agency or employment business for the seafarer to give a period of notice which is reasonable to terminate the contract.

(3) In this section, "**relevant seafarer**" includes a person who is engaged in maritime work, whether or not he is currently seeking such work, but excludes, in the case of an employment business, a seafarer who is or will be employed by the employment business under a contract of service or apprenticeship.

Information required from seafarers.

16. An agency or employment business may not introduce or supply a seafarer to a hirer unless it has obtained confirmation –

- (a) of the identity and age of the seafarer,
- (b) that the seafarer has the experience, training,

qualifications and any authorisation or documents which the hirer considers necessary, or which are required by law or by any professional body, to work in the position the hirer seeks to fill, and

- (c) that the seafarer is willing to work in the position which the hirer seeks to fill.

Seafarers' employment agreements.

17. An agency or employment business may not supply a seafarer to a hirer unless –

- (a) it is satisfied that the employment agreement under which the seafarer is to be engaged is in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of, or is applicable to, that employment agreement,
- (b) it has explained to the seafarer his rights and duties under the employment agreement under which he is to be engaged,
- (c) it gives the seafarer the opportunity to examine that employment agreement both before he signs it (including the opportunity to ask questions about its operation) and after he signs it, and
- (d) it gives the seafarer, free of charge, a copy of the employment agreement directly after he has signed it.

Records.

18. (1) Every agency and employment business shall keep records which are sufficient to show whether the provisions of this Ordinance are being complied with, including the particulars specified in the Schedule, in relation to every application received by the agency or employment business from a hirer or seafarer.

(2) The records mentioned in subsection (1) shall be kept for at least one year from the date of their creation and, in the case of the particulars specified in the Schedule, at least one year after the date on which the agency or employment business last provides services in the course of its business as an agency or employment business to the applicant to whom they relate.

(3) The records mentioned in subsection (1) may be kept by an agency or employment business either at any premises it uses for or in connection with the carrying on of an agency or employment business, or elsewhere, provided that if they are kept elsewhere they are readily accessible.

Restriction on charging seafarers seeking employment, etc.

19. (1) Subject to subsection (2), an agency or an employment business shall not demand or directly or indirectly receive from any seafarer any fee (in whole or in part) for finding him maritime work or for seeking to find him maritime work.

(2) For the avoidance of doubt, subsection (1) shall not prevent an agency or employment business from requiring a seafarer to bear the cost of obtaining

—

- (a) a Seafarer Medical Certificate or equivalent,
- (b) a British Seaman's Discharge Book or equivalent, or
- (c) a passport or similar personal travel document

(excluding any visa necessary for the employment).

Repatriation of seafarers.

20. (1) An agency or employment business shall not supply a seafarer to a hirer unless it is satisfied that the owner of the ship on which the seafarer would be working under that supply has procedures in place of a type described in subsection (2).

(2) The procedures mentioned in subsection (1) are procedures to return the seafarer to one of the places described in subsection (3) if he is –

- (a) left behind in any place or country other than his country of residence, or
- (b) is taken to such a place or country on being shipwrecked.

(3) The places are –

- (a) in the case of a seafarer who is resident in the Bailiwick, any place on the island on which he is resident,
- (b) in the case of a seafarer who is not resident in the Bailiwick, a place in the country in which he is resident being –
 - (i) if he joined the ship from which he was left behind or shipwrecked in that country, the place where he joined the ship, or

- (ii) if he did not join the ship in that country, the place in that country at which he was engaged to join the ship, or
- (c) any other place which may be agreed between the seafarer and the ship owner.

Complaints.

- 21.** (1) An agency or employment business shall –
- (a) inform a seafarer of how he may make a complaint about the agency or employment business,
 - (b) examine and respond to any such complaint within a reasonable period of time, and in any event within 28 days, and
 - (c) inform the [Committee for Employment & Social Security] of –
 - (i) any complaint it receives under paragraph (a) within seven days of receiving the complaint, and
 - (ii) its response to that complaint, within seven days of making that response.

(2) In this section, "**seafarer**" includes a person who has been placed in maritime work by the agency or employment business.

NOTE

In section 21, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Duty to provide financial system of protection.

22. (1) An agency or employment business shall not supply a seafarer to a hirer unless the condition in subsection (2) is satisfied.

(2) The condition is that the agency or employment business has established a system of protection, by way of insurance or an equivalent appropriate measure that has been approved by the [Committee for Employment & Social Security], to compensate the seafarer for monetary loss which he may incur as a result of –

- (a) a failure of the agency or employment business to meet its obligations to the seafarer, or
- (b) a failure of the shipowner under the seafarer employment agreement to meet its obligations to the seafarer.

NOTE

In section 22, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

PART 4
ENFORCEMENT

Appointment and powers of officers.

23. (1) The [Committee for Employment & Social Security] may appoint officers to –

- (a) conduct inspections under Part 2, and
- (b) exercise the powers set out in subsections (4) and (5), for the purpose of assessing whether a registered agency or employment business continues to comply with the requirements of Part 3.

(2) The power to appoint officers under subsection (1) shall be exercised following consultation with the [Policy and Finance Committee] of the Chief Pleas of Sark, but such a failure to comply with this subsection shall not invalidate or otherwise affect any such appointment made under that subsection.

(3) An officer appointed under subsection (1) shall, if so required, produce some duly authenticated document showing his authority so to act.

(4) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of this Ordinance does not know that he is an officer so acting, he shall identify himself as such to that person.

(5) An officer may, at any reasonable time –

- (a) require the production by a relevant person of –
 - (i) any records required to be kept and preserved in

accordance with section 18, and

- (ii) any other documents that may be relevant to ascertaining whether an offence under this Ordinance has been committed,
- (b) inspect and examine those records and documents and to copy any material part of them,
- (c) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of them, and
- (d) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Ordinance is being or has been complied with.

(6) An officer has power for the performance of his duties at all reasonable times to enter any relevant premises in order to exercise any power conferred on him by subsection (5).

(7) The powers conferred by subsections (5) and (6) include power, on reasonable written notice, to require a relevant person –

- (a) to produce any records or documents mentioned in subsection (5)(a) to an officer at such time and place as may be specified in the notice, or

- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsections (5)(c) and (d).

(8) A statement made by a person in response to a requirement imposed by or under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against him in criminal proceedings except –

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (ii) in proceedings for –

- (A) an offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

- (B) perjury, or

- (C) perverting the course of justice.

(9) Nothing in this section shall compel the production or

divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(10) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(11) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(12) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence, and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(13) In relation to offences tried before the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsection (12) are applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008^c.

(14) In this section "**relevant person**" means any person whom an officer has reasonable cause to believe to be a person carrying on an agency or employment business, or an agent or employee of an agency or employment business.

(15) In this section "**relevant premises**" means any premises

^c Order in Council No. V of 2008; there are amendments not relevant to this Ordinance.

which an officer has reasonable cause to believe to be –

- (a) premises at which an agency or employment business carries on business, or
- (b) premises which an agency or employment business uses in connection with that business.

NOTES

In section 23,

the words in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016;

the words in square brackets in subsection (2) were substituted by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 3, with effect from 10th October, 2018.

The functions, rights and liabilities of the Sark Finance and Resources Committee and of its Chairman arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 1, with effect from 10th October, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.

PART 5 APPEALS

Appeals.

24. (1) A person aggrieved by any of the following decisions of the [Committee for Employment & Social Security] –

- (a) a decision to refuse to grant an application for

registration,

- (b) a decision to suspend registration, or
- (c) a decision to revoke registration,

may appeal to the Court.

- (2) The grounds of an appeal under this section are that –
 - (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted –
 - (a) within a period of 28 days immediately following the date of the notice of the decision, and
 - (b) by summons served on the [Committee for Employment & Social Security] stating the grounds and material facts on which the appellant relies.

- (4) On an appeal under this section the Court may –
- (a) set the decision of the [Committee for Employment & Social Security] aside and, if the Court considers it appropriate to do so, remit the matter to the [Committee for Employment & Social Security] with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

NOTE

In section 24, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

PART 6
OFFENCES

Operation of seafarer recruitment and placement services when unregistered.

25. (1) It is an offence for an agency or an employment business to introduce or supply a seafarer to a hirer, or to hold itself out as being capable of introducing or supplying a seafarer to a hirer, if at the time of the introduction or supply or holding out that agency or employment business is not registered under this Ordinance.

(2) For the avoidance of doubt, an offence under subsection (1) is committed if at the time of the introduction or supply or holding out the registration of the agency or employment business has been suspended, revoked or surrendered.

(3) An agency or an employment business guilty of an offence under subsection (1) is liable –

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,
- (b) on conviction on indictment to a fine.

(4) In relation to offences tried before the Court of the Seneschal, and for the avoidance of doubt, the penalty stipulated by subsection (3)(a) is applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008.

False or misleading statements, records etc.

26. (1) A person who –

- (a) in connection with an application for registration under this Ordinance,
- (b) in purported compliance with a requirement imposed by or under any provision of this Ordinance or any regulation made under it, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the [Committee for Employment & Social Security] for the purpose of exercising its functions conferred by or under this Ordinance –

Consolidated text

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable –
 - (a) on summary conviction, to a period of imprisonment not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both,
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years, or to both.

(3) In relation to offences tried before the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsection (2)(a) are applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008.

NOTE

In section 26, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Offences relating to certificates of registration.

27. (1) It is an offence for an agency or employment business to fail to deliver a certificate of registration to the [Committee for Employment & Social Security] when required to do so under section 5(2).

(2) It is an offence for an agency or employment business to fail to make a certificate of registration available to a person reasonably requesting to see it in the circumstances set out in section 5(3).

(3) It is a defence for an agency or employment business charged with an offence under this section to show that the certificate in question is not, and was not at the relevant time, in its possession or control.

(4) An agency or employment business which is convicted of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) In relation to offences tried before the Court of the Seneschal, and for the avoidance of doubt, the penalty stipulated by subsection (4) is applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008.

NOTE

In section 27, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Offences by bodies corporate, etc.

- 28.** (1) This section applies to any offence under this Ordinance.
- (2) If an offence committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In subsection (2) "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Where an offence is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be

attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in such a capacity,

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(6) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(7) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of that body.

PART 7
SUPPLEMENTAL AND FINAL

General provisions as to regulations.

- 29.** (1) Regulations under this Ordinance –
- (a) may be amended or repealed by subsequent regulations hereunder,

- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the [Committee for Employment & Social Security] to be necessary or expedient.

(2) The power to make regulations under this Ordinance shall be exercised following consultation with the [Policy and Finance Committee] of the Chief Pleas of Sark, but a failure to comply with this subsection shall not invalidate any regulations made under this Ordinance.

(3) Any power conferred by this Ordinance to make regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or

subject to any conditions specified in the regulations.

NOTES

In section 29,

the words in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016;

the words in square brackets in subsection (2) were substituted by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 3, with effect from 10th October, 2018.

The functions, rights and liabilities of the Sark Finance and Resources Committee and of its Chairman arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 1, with effect from 10th October, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.

Transitional provisions.

30. (1) In this section, "**the transitional period**" means the period of three months beginning on the day this Ordinance comes into force, and "**ongoing supply**" means the continuous supply by an employment business of a particular seafarer to a particular hirer to fill a particular position, which continuous supply commenced before the day on which this Ordinance comes into force and continues after that date.

(2) Subject to the provisions of this section, this Ordinance applies in respect of existing employment agreements with effect from the date on which it comes into force.

(3) Sections 2 and 25 shall not apply during the transitional period.

(4) For the avoidance of doubt, during the transitional period an agency or employment business may apply to the [Committee for Employment & Social Security] for registration under this Ordinance, and the [Committee for Employment & Social Security] may grant or refuse such an application; and the provisions of this Ordinance other than sections 2 and 25 shall apply in such circumstances, and shall be construed accordingly.

(5) Sections 15, 17 and 19 shall not apply during the transitional period in respect of any employment agreement in force at the start of the transitional period.

(6) In sections 16, 17 and 22, references to "**supply**" shall not include an ongoing supply during the transitional period.

NOTE

In section 30, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Interpretation.

31. (1) In this Ordinance, unless the context otherwise requires –

"agency" means an employment agency as defined in section 4(1) of the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 ("**the Law**"), but does not include a business where the services provided are limited exclusively to the provision of information; and includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his

capacity in carrying on the agency,

"approved inspector" has the meaning given in section 4(4),

"country" includes territory,

"the Court" means the Royal Court of Guernsey sitting as an Ordinary Court,

"employment business" means an employment business as defined in section 4(1) of the Law and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business,

"enactment" means any Law, Ordinance or subordinate legislation,

"hirer" means a person (including an employment business) to whom an agency or employment business introduces or supplies or holds itself out as being capable of introducing or supplying a seafarer for the purpose of that seafarer undertaking maritime work,

"maritime work" means work, employment or engagement that is on board, or ordinarily on board, a seagoing commercial ship, but excludes work as an armed security guard on board a ship,

"seafarer" means a person who is seeking maritime work,

"Seafarer Medical Certificate" means a medical fitness certificate issued under the Merchant Shipping (Maritime Labour Convention) (Medical

Certification) Regulations 2010^d,

"seagoing commercial ship" means a ship, other than a pleasure vessel, which navigates in waters other than exclusively inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"uniform scale of fines" means the uniform scale of fines in force from time to time under the Uniform Scale of Fines (Sark) Law, 1989^e,

and other words and expression which are defined in the Law have the same meanings as in that Law.

(2) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Ordinance.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) For the avoidance of doubt, references in this Ordinance to Regulation 1.4 of the Convention include references to that Regulation's associated Standard, A1.4.

d United Kingdom S.I. 2010 No. 737.

e Ordres en Conseil Vol. XXXI, p. 320.

f Ordres en Conseil Vol. XIII, p. 355.

(5) In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Ordinance, the question shall be determined in the first instance by the [Committee for Employment & Social Security] after consultation with such shipowners' and seafarers' organisations as it considers relevant.

NOTE

In section 31, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

Meaning of "pleasure vessel".

32. (1) Subject to subsections (4) and (5), for the purposes of this Ordinance a "**pleasure vessel**" is a vessel of a type described in subsection (2), (3) or (6).

(2) The first type of pleasure vessel is a vessel –

- (a) wholly owned by an individual and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
- (b) wholly owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

which is on a voyage or excursion in respect of which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the

voyage or excursion.

(3) The second type of pleasure vessel is a vessel wholly owned by or on behalf of an unincorporated association formed for the purposes of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that unincorporated association or their immediate families, and for the use of which any charges levied are paid into the funds of, and applied for the general use of, that unincorporated association.

(4) A vessel does not fall within subsection (2) or (3) if payments other than those mentioned in those paragraphs are made by or on behalf of the users of the vessel, other than the owner of the vessel.

(5) In subsections (2) and (3) "**immediate family**" means, in relation to an individual, the spouse or civil partner of the individual, and a sibling, ancestor or lineal descendant of that individual or of that individual's spouse or civil partner.

(6) The third type of pleasure vessel is a vessel described as a pleasure vessel, or as a non-commercial vessel, in the register of ships of its flag state, whether or not it falls within either subsection (2) or (3).

Extent.

33. This Ordinance has effect in Sark.

Citation.

34. This Ordinance may be cited as the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Sark) Ordinance, 2015.

Commencement.

35. This Ordinance shall come into force on 2nd November, 2015.

Particulars to be included in an agency's or employment business' records relating to hirers.

1. Date application received
2. Hirer's name and address, and location of employment if different
3. Details of the position(s) the hirer seeks to fill
4. Duration or likely duration of work
5. Experience, training, ability, qualifications and authorisation required by the hirer, by law, or by any professional body; and any other conditions attaching to the position(s) the hirer seeks to fill
6. The terms offered in respect of the position(s) the hirer seeks to fill
7. Copy of the terms between the agency or employment business and the hirer, and any document recording any variation thereto
8. Names of seafarers introduced or supplied
9. Details of each resulting engagement and date from which it takes effect
10. Dates of requests by the agency or employment business for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices.

Particulars to be included in an agency's or employment business' records relating to seafarers.

1. Date application received
2. Seafarer's name, address and date of birth
3. Any terms which apply or will apply between the agency or employment business and the seafarer, and any document recording any variation thereto
4. Details of the seafarer's training, experience, qualifications, and any authorisation to undertake particular work, and copies of any documentary evidence of the same obtained by the agency or employment business
5. Details of any requirements specified by the seafarer in relation to taking up employment
6. Names of hirers to whom the seafarer is introduced or supplied
7. Details of any resulting engagement and date from which it takes effect
8. Copy of any contract between the seafarer and any hirer entered into by the agency on the seafarer's behalf
9. Date application withdrawn or contract terminated (where applicable).