

Order on the activities of private recruitment and placement services¹

Pursuant to section 8b(2), section 65(3), section 66(ii)(b), section 70(1) and section 74a of the act on seafarers' conditions of employment (*lov om søfarendes ansættelsesforhold*), cf. consolidated act no. 742 of 18 July 2005 on seafarers' conditions of employment, etc., as amended by act no., 493 of 12 May 2010 and act no. 251 of 30 March 2011, and section 20a and 20b of the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 654 of 15 June 2010, as amended by act no. 1231 of 18 December 2012, the following is laid down by authority:

Part 1

Definitions and application

Section 1. This order shall apply to private recruitment and placement services in Denmark the primary purpose of which is to recruit or place seafarers for work on board merchant ships or which recruit or place a considerable number of seafarers for work on board merchant ships.

Subsection 2. A merchant ship shall mean any ship, with the exception of warships, naval auxiliaries, fishing vessels and recreational craft.

Subsection 3. In case of doubt whether a recruitment and placement service is covered by subsection 1, the issue shall be decided by the Danish Maritime Authority following consultation with the relevant seafarer and shipowner organisations.

Section 2. For the purposes of this order, the following definitions shall apply:

- 1) Private recruitment and placement service for seafarers: Any private person or company, institution, agency or other organization, not established in the public sector, which is engaged in recruiting or placing seafarers for work on board merchant ships.
- 2) Recruitment of seafarers: The conclusion of an employment agreement with a seafarer as authorized on behalf of somebody else.
- 3) Placement of seafarers: The establishment of contact between a specific seafarer without a job and an employer who has a vacant position on board a merchant ship. Information about vacant positions for seafarers on the websites of shipping companies or trade unions in the form of ordinary positions vacant shall not be considered placement service.
- 4) Seafarer: Any person who is employed, engaged or works on board a merchant ship and who does not carry out work on board only when the ship is in port.

¹ This order contains provisions implementing parts of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, Official Journal 2009, no. L 124, pp. 30-50.

Part 2

The certification and obligations of the recruitment and placement service

Section 3. A recruitment and placement service shall hold a valid certificate in order to carry out its activities.

Subsection 2. The certificate shall be issued by the Danish Maritime Authority or the one whom the Danish Maritime Authority may authorize to do so. It shall remain valid for five years unless the Danish Maritime Authority determines a shorter period of validity.

Subsection 3. It is a condition for acquiring a certificate pursuant to subsection 1 that the recruitment and placement service can prove to the Danish Maritime Authority that the service has established procedures ensuring compliance with the obligations resting with the recruitment and placement service pursuant to sections 4-8 and sections 12-14, including procedures for ensuring the availability of the necessary knowledge in order to meet these obligations.

Subsection 4. The certificate shall lapse in case of the bankruptcy of the recruitment and placement service. It shall be possible to withdraw the certificate in case of gross or repeated contraventions of the provisions of sections 4-8 or sections 12-14.

Section 4. A recruitment and placement service shall ensure that the seafarer recruited or placed for a merchant ship:

- 1) is qualified and holds the documents necessary for the work that the person concerned is to carry out on board;
- 2) has the prescribed documentation for being fit in terms of health for the work to be carried out on board;
- 3) concludes a written employment agreement that is in accordance with the laws and regulations in force in the country whose flag the ship flies;
- 4) is informed about his or her rights and obligations under the employment agreement, including about the employer's employment policy;
- 5) has a possibility of going through the employment agreement when it is signed, at the latest; and
- 6) gets a signed copy of the employment agreement and of any collective agreements that form a part of the employment agreement.

Section 5. The recruitment and placement service shall neither directly nor indirectly, partly or in full require payment from the seafarer, cf. however subsection 2.

Subsection 2. Subsection 1 shall not apply to expenses for compliance with the flag State's requirements for certificates of competency, other similar certificates or any discharge book as well as expenses for passports or other personal travel documents, except expenses for any necessary visa.

Section 6. The recruitment and placement service shall be obliged to provide financial security for covering the seafarer's economic loss as a consequence of the service's mistakes and negligence as well as the shipowner's or, to the extent that the employer is somebody else than the shipowner, its lacking compliance with his obligations according to the seafarer's employment agreement. The financial security may either be a bank guarantee for the company or an insurance taken out by the company with an insurance company permitted to carry out this type of insurance activities. The financial security shall, as a minimum, amount to DKK 5,000 per recruited or placed seafarer in the calendar year concerned.

Subsection 2. If the financial security lapses, the one who has taken out the security shall be obliged to inform the Danish Maritime Authority hereof. If new security has not been provided as a substitute, the financial security shall continue to cover economic losses pursuant to subsection 1. The claim shall be raised against the company no later than three months after the Danish Maritime Authority has been informed by the one where the security is provided that coverage will lapse or has lapsed due to non-fulfilment or termination.

Subsection 3. The one providing the financial security shall issue a certificate as documentation hereof and the recruitment and placement service shall ensure that the certificate is posted in the company where it is easily accessible and visible to the seafarers.

Section 7. The recruitment and placement service shall be obliged to consider complaints about their activities and shall, at the request of the Danish Maritime Authority, submit the documents of a complaint.

Section 8. The recruitment and placement service shall keep a record of all seafarers who have been recruited or placed through the service. The record shall be available for control by the Danish Maritime Authority or others whom the Danish Maritime Authority may authorise for this.

Part 3

Certification and control by the Danish Maritime Authority

Section 9. The Danish Maritime Authority shall issue certificates to recruitment and placement services in Denmark, cf. section 3(2).

Subsection 2. The Danish Maritime Authority may approve that classification societies, other companies or individual persons issue certificates for private recruitment and placement services in Denmark.

Section 10. The Danish Maritime Authority shall monitor private recruitment and placement services in Denmark certified by the Danish Maritime Authority.

Part 4

Complaint provisions

Section 11. Complaints about the activities of a certified private recruitment and placement service may be brought before the Danish Maritime Authority.

Part 5

Special provisions

Section 12. A recruitment and placement service shall ensure that the following is complied with:

- 1) The seafarer shall, during any negotiation about recruitment or placement, be free to choose a ship.
- 2) A shipowner or a master of a ship shall be entitled to freely choose his crew.
- 3) That the employment contract ensures that all interested parties are protected.

Section 13. The recruitment and placement service shall ensure that the shipowner has provided financial security for the seafarers' voyage home.

Section 14. A recruitment and placement service shall not use means or keep records suitable to prevent seafarers from getting work on board.

Section 15. Payment for certification of the Danish Maritime Authority shall be determined according to the Ministry of Finance's regulations on the calculation of fees. The Danish Maritime Authority shall publish the current fee on the Danish website of the Danish Maritime Authority www.sofartsstyrelsen.dk.

Part 6

Penalty provisions

Section 16. Contraventions of section 3(1), section 4, section 5(1), section 6(1) and (3), section 13 and section 14 shall be liable to punishment by fine.

Subsection 2. Companies, etc. (legal personalities) shall be liable to punishment according to the provisions of chapter 5 of the penal code (*straffeloven*).

Part 7

Entry into force provisions

Section 17. This order shall enter into force on 20 August 2013.

Subsection 2. At the same time, order no. 120 of 2 March 1973 on the activities of recruitment offices shall be repealed.

Danish Maritime Authority, 7 March 2013

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