

(Translation. Only the Faroese version has legal validity)

Executive Order No. 68 of 23 May 2013 on the activities of private recruitment and placement services for seafarers

Under the provisions in section 8b and section 68 in Act No. 4 from 15th January 1988 on seafarers' conditions of employment etc. as amended by Act No. 71 from 30th May 2011, and section 17 subsection 2 in Act No. 165 from 21st December 2001 on Safety at sea amended by Act No. 61 from 17th May 2013 the following shall be laid down:

Chapter 1

Definition and scope

Section 1. This executive order shall apply to private recruitment and placement services in the Faroe Islands whose primary purpose 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 fishing ships, pleasure vessels, warships and naval auxiliaries.

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

Section 2. Definition:

- 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 a shipowner or an employer who has a vacant position on board a merchant ship. Information about vacant positions for seafarers on the homepages of shipping companies or trade unions, etc., 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.

Chapter 2

Certification and obligations

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 Faroese Maritime Authority or by whom the Faroese Maritime Authority may authorize to do so. The certificate shall remain valid for five years, unless the Faroese Maritime Authority determines a shorter period of validity.

Subsection 3. The acquisition of a certificate according to subsection 1 is conditioned by the recruitment and placement service presenting evidence to the Faroese Maritime Authority that the service has established procedures ensuring compliance with the obligations resting with the recruitment and placement service according 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 bankruptcy of the recruitment and placement service. Gross or repeated violations of the provisions of sections 4-8 or sections 12-14 may cause withdrawal of the certificate.

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) holds 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 rules 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 the possibility to go through the employment agreement, at the latest, when the agreement will be signed, and
- 6) gets a signed copy of the employment agreement and of possible collective bargaining agreements that form a part of the employment agreement.

Section 5. A 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, discharge book or any other similar certificates as well as expenses for passports or other personal travel documents, except expenses for any necessary visa, which must be paid by the owner.

Section 6. A recruitment and placement service shall be obliged to provide financial security for covering the seafarer's economic loss as a consequence of:

- 1) the service's mistakes or negligence as well as
- 2) the shipowner's or another employer's lack of compliance with the obligations according to the seafarer's employment agreement.

Subsection 2. The financial security may 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, be an amount of DKK 5,000 per recruited or placed seafarer in the calendar year concerned.

Subsection 3. If the financial security lapses the one who has taken out the security shall be obliged to inform the Faroese Maritime Authority hereof. If new security has not been provided as a substitute, the financial security shall continue to cover economic losses according to subsection 1. The claim shall be raised against the recruitment and placement service no later than three months after the Faroese Maritime Authority has been informed by the one who where the security is provided that coverage will lapse or has lapsed due to non-fulfilment or termination.

Subsection 4. 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. A recruitment and placement service shall be obliged to consider complaints about their activities and shall, at the request of the Faroese Maritime Authority, submit the documents of a complaint to the Faroese Maritime Authority.

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 Faroese Maritime Authority or others whom the Faroese Maritime Authority may authorise for this.

Chapter 3

Certification and control by the Faroese Maritime Authority

Section 9. The Faroese Maritime Authority issues certificates to recruitment and placement services in Faroe Islands, cf. section 3, subsection 2.

Section 10. The Faroese Maritime Authority shall monitor private recruitment and placement services in Faroe Islands certified by the Faroese Maritime Authority.

Chapter 4

Complaint provisions

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

Chapter 5

Special provisions

Section 12. A recruitment and placement service shall comply with the following:

- 1) the seafarer shall, during any negotiation about recruitment or placement, be free to choose 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. A recruitment and placement service shall ensure that the shipowner has provided financial security for the seafarers' voyage home cf. section 71 a, subsection 1 in Act on seafarers' conditions of employment, etc.

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. To issue the certificate the Faroese Maritime Authority charges the applicant with DKK 850 per hour of work for the preparations, survey and follow-up work in connection with the certification.

Chapter 6

Penalties

Section 16. Violation of section 3, subsection 1, sections 4-5, subsection 1, section 6, subsection 1 and subsection 3 and sections 13 and 14 shall be punishable by a fine.

Subsection 2. Legal persons shall incur criminal liability according to the regulations in chapter 5 of the Faroese Penal Code.

Chapter 7

Entry into force

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

Vinumálaráðið, 23 May, 2013

Johan Dahl

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/Björgfríð Ludvig

Permanent Secretary