

THE BAILIFF OF GUERNSEY
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The President
States of Alderney
Island Hall
Royal Connaught Square
ALDERNEY
GY9 3UE

05 December 2012

Dear Sir

I enclose a copy of a States Report dated 11th September 2012, addressed to the Chief Minister, Policy Council, from the Commerce and Employment Department, concerning 'Maritime Labour Convention – Enabling Legislation' proposals.

On the 28th November 2012, the States of Deliberation resolved as follows:-

- “1. *To approve the proposals set out in Section 3 of that Report.*
2. *To approve the Projet de Loi entitled “The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.”*

I enclose fifteen copies of the Projet de Loi and shall be obliged if you will place it before the States of Alderney for their approval at their next meeting.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'R. Collas'.

COMMERCE AND EMPLOYMENT DEPARTMENT**MARITIME LABOUR CONVENTION – ENABLING LEGISLATION**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

11th September 2012

Dear Sir

1. Executive Summary

- 1.1 This Report proposes that the States approve 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 of the Maritime Labour Convention, 2006 ("the Convention"). This provision requires contracting states to regulate seafarer recruitment and placement services - commonly known as manning agencies - in their territory.
- 1.2 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, albeit one with a proud tradition, and 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, or whether our shipping and other commercial interests, the rights of our seafarers, and our reputation, can properly be protected by taking practical steps that fall short of formal extension.
- 1.3 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, and have recommended that the legislation take the form of an enabling Law. Such legislation would allow an Ordinance to be made in the normal way in due course giving substantive effect to the provisions of that Regulation, and also to address wider problems that the Commerce and Employment Department ("the Department") has experienced with a small minority of manning agencies based in Guernsey (discussed further in paragraph 3.1.3). It would also give the States

the power to regulate employment agencies with no link to shipping in the future by Ordinance should they so decide, without the need for further primary legislation, though the Department has no intention to propose such wider regulation at the present time.

- 1.4 Regulation 1.4 of the Convention provides, *inter alia*, that contracting states must ensure, in respect of seafarers who work on ships that fly their flag, that shipowners using the services of manning agencies based in other, non-contracting states, must ensure that those services conform to the Regulation's requirements. The importance of this for the Island is that there are several large maritime manning agencies based in Guernsey, employing sizeable numbers of local people, which place many thousands of seafarers on other states' ships. If Guernsey does not have, when the Convention comes into force or shortly thereafter, provisions in place that conform to the requirements of Regulation 1.4, it is possible that those agencies could lose a significant part of that business putting at risk employment, income and the Island's reputation as a reputable and properly regulated service provider.
- 1.5 To enable the relevant domestic legislation to be in place when the Convention comes into force in August 2012, the Law Officers recommend that it be made as soon as possible, and the Department accepts and supports that recommendation.
- 1.6 Policy regarding the Convention is within the mandate of the Public Services Department and Guernsey Harbours; however, policy in relation to employment agencies is within the Department's mandate, which is why it is sponsoring this legislation, in consultation and co-operation with the Public Services Department, Guernsey Harbours and the Law Officers.

2. The Convention

- 2.1 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 decent conditions of work on a wide range of subjects, 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).
- 2.2 Many of the Convention's provisions are relevant only to ships that are bigger than those allowed on the Guernsey Register. 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 composite small ships code that is currently being developed by the UK's Maritime and Coastguard Agency (MCA), with

concomitant expanded ship inspections, avoiding the need to draft significant amounts of new legislation. The only exception that has been identified at present is Regulation 1.4, which deals with recruitment and placement.

- 2.3 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.*" Lawyers from the United Kingdom's Department for Transport have advised that a voluntary system of regulation would not meet the requirements of the Convention, as had been hoped, and that legislation is required to ensure compliance. As a result, Red Ensign Group administrations, including Guernsey, are now 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. The text of the Regulation is set out in the Annex to this Report.

3. Addressing the issue by enabling legislation

- 3.1 The Department's proposal is for the approval of enabling legislation, rather than a narrower provision addressing only the Convention requirements, for several reasons.
- 3.1.1 The Law Officers advise that to make enabling primary legislation now, and to prepare a substantive Ordinance thereunder afterwards, affords the greatest chance of having the necessary provisions in place in our domestic legislation when the Convention comes into force. This is because such legislation need not address policy detail and so can be drafted relatively quickly - in this case it has been drafted already - allowing it to be transmitted to London for scrutiny and Royal Sanction much faster than would be the case if the primary legislation had to address the implementation of the specific requirements of Regulation 1.4. In the meantime, the substantive Ordinance to be made under it, which will address that detail, can be drafted and considered in slower time, and be the subject of appropriate industry consultation. When the Law is then registered on the records of the Island and commenced, the Ordinance can be made and come into force effectively simultaneously.
- 3.1.2 An enabling Law would give the States the power in the future to regulate employment agencies generally, or other areas within that sector, by Ordinance, without the need to approve further primary legislation to do so, which would enable legislation to put in place significantly more quickly if the need arose. The Department, as stated in the Executive Summary, has no current intention to propose the regulation of employment agencies generally; but as primary legislation is required to address the narrow issue of compliance with the Convention, it seems sensible to take the opportunity to give the States the power to legislate in this area by Ordinance in the future.

3.1.3 Moreover, while the majority of manning agencies based in the Bailiwick are reputable businesses operating to high standards, there have in recent years been cases of bad practice by a small number of agencies, at least one of which has resulted in litigation. The Department thinks it appropriate to take this opportunity to address this issue - to reduce reputational risk to the Bailiwick, to ensure that only the highest standards apply in respect of Bailiwick businesses in this sector, and to reduce the risk of seafarers suffering unacceptable loss and prejudice. The type of requirements set out in Regulation 1.4 and to be addressed in an Ordinance made under the enabling Law would be of direct relevance for that purpose, but the flexibility afforded by an enabling Law would allow provisions that go beyond the strict requirements of Regulation 1.4 if policy analysis shows that to be necessary.

4. Costs/Resources

4.1 Subject to what is said in paragraph 4.2 below, the making of an enabling Law as proposed in this Report will have no implications for costs or resources.

4.2 The making of an Ordinance under that Law, including an Ordinance regulating manning agencies to ensure compliance with the Convention as discussed in this Report, could have such implications, though the Department would expect them to be minor. That would be addressed in the relevant Report in the normal way.

5. Consultation

5.1 The Department is advised that the Public Services Department and Guernsey Harbours have consulted with the relevant authorities in Alderney and Sark, who are aware of the need to ensure that the Convention is given domestic effect and support the making of a Projet de Loi in the terms attached.

5.2 The Department is advised that the Public Services Department and Guernsey Harbours are satisfied that the majority of manning agencies based in the Bailiwick are aware of the Convention and support measures being taken to give appropriate effect to Regulation 1.4. A more detailed consultation with industry will be conducted in the course of the preparation of the relevant subordinate legislation.

5.3 The Law Officers have been closely involved in the formulation of the proposals set out in this Report and support the legislation proposed.

5.4 The United Kingdom Department for Transport and the Ministry of Justice are fully conversant with the Bailiwick's proposals for the implementation of the Convention generally and this proposed legislation in particular.

5.5 The Department believes that it has complied fully with the six principles of corporate governance in the preparation of this States Report.

6. Legislation

- 6.1 Due to the need to have enabling legislation in place as soon as possible, for the reasons set out in paragraph 3.1.1, the Department has sought the approval of the Policy Council and the Presiding Officer for this Report and the Projet de Loi to appear in the same Billet d'État. The Department is grateful to the Policy Council and the Presiding Officer for their consent in this regard.

7. Recommendations

- 7.1 The Department recommends that the States:

1. Approves the proposals set out in Section 3 of this Report, and
2. Approves the Projet de Loi entitled the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012.

Yours faithfully

K A Stewart
Minister

A Brouard
Deputy Minister

L Queripel
D De Lisle
M Hadley
States Members