

Seafarers' Wages Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Transport, have been ordered to be published as HL Bill 38–EN

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Vere of Norbiton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Seafarers' Wages Bill [HL] are compatible with the Convention rights.

Seafarers' Wages Bill [HL]

CONTENTS

Introductory

- 1 Services to which this Act applies
- 2 Non-qualifying seafarers

National minimum wage equivalence declarations

- 3 Power to request declaration
- 4 Nature of declaration
- 5 Requirement to provide information
- 6 Inspections

Surcharges

- 7 Imposition of surcharges
- 8 Objections to surcharges
- 9 Refusal of harbour access for failure to pay surcharge

Supplementary

- 10 Prosecution of offences
- 11 Guidance and directions
- 12 Regulations

General

- 13 “Harbour” and “harbour authority”
- 14 General interpretation
- 15 Extent, commencement and short title

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TO

Make provision in relation to the remuneration of seafarers who do not qualify for the national minimum wage.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory

1 Services to which this Act applies

- (1) This Act applies to a service for the carriage of persons or goods by ship, with or without vehicles, between a place outside the United Kingdom and a place in the United Kingdom. 5
- (2) But this Act does not apply to—
- (a) a service that is for the purpose of leisure or recreation, or
 - (b) a service provided by a fishing vessel.
- (3) In this Act “ship” includes—
- (a) any kind of vessel used in navigation, and 10
 - (b) hovercraft.

2 Non-qualifying seafarers

In this Act, “non-qualifying seafarer” means a person—

- (a) who works on a ship providing a service to which this Act applies,
- (b) whose work on the ship is carried out in relation to the provision of the service, and 15
- (c) who fails to qualify for the national minimum wage in respect of that work merely because, for the purposes of the National Minimum Wage Act 1998, the person does not work, or does not ordinarily work, in the United Kingdom. 20

National minimum wage equivalence declarations

3 Power to request declaration

- (1) Where ships providing a service to which this Act applies use the harbour of a harbour authority, the authority may request the operator of the service to provide a national minimum wage equivalence declaration in respect of the service to the authority. 5
- (2) A national minimum wage equivalence declaration is to relate to a period of a year beginning with—
- (a) the day on which it is requested, or
 - (b) a date specified in the request, where the date is earlier than the day on which it is requested by no more than a year. 10
- (3) A harbour authority may not request a national minimum wage equivalence declaration in respect of any year unless it appears to the authority that ships providing the service will, by the end of the period to which it relates, have entered the harbour on at least 120 occasions in the year. 15
- (4) Regulations may make provision—
- (a) restricting the circumstances in which the power in subsection (1) may be exercised;
 - (b) as to the form of national minimum wage equivalence declarations;
 - (c) as to the manner in which national minimum wage equivalence declarations are to be provided. 20
- (5) The operator of a service to which this Act applies is guilty of an offence if—
- (a) at any time in the period to which the declaration relates, the service is operated inconsistently with the declaration, and
 - (b) the operator fails to inform the harbour authority of that fact within four weeks of whichever is the later of—
 - (i) the start of the period, and
 - (ii) the time when the service starts to be operated inconsistently. 25
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction— 30
- (a) in England and Wales, to a fine, or
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

4 Nature of declaration

- (1) A national minimum wage equivalence declaration in respect of a service to which this Act applies is— 35
- (a) a declaration to the effect that, in the period to which the declaration relates, there will be no non-qualifying seafarers working on ships providing the service, or
 - (b) a declaration to the effect that, in the period to which the declaration relates, non-qualifying seafarers working on ships providing the service will be remunerated in respect of their UK work in relation to the service at a rate that is equal to or exceeds the national minimum wage equivalent. 40

- (2) For the purposes of this Act, the national minimum wage equivalent is an hourly rate specified in regulations.
- (3) Regulations may make provision for determining for the purposes of this Act—
- (a) the hourly rate at which a non-qualifying seafarer is remunerated in any period in respect of any work, and
 - (b) whether, or the extent to which, a non-qualifying seafarer's work in relation to a service to which this Act applies is UK work.
- (4) Regulations under subsection (3)(a) may in particular make—
- (a) any provision referred to in section 2(2) to (6) of the National Minimum Wage Act 1998;
 - (b) provision relating to currency conversion.
- (5) The Secretary of State must in making regulations under this section seek to secure that a non-qualifying seafarer is for the purposes of this section remunerated at a rate equal to the national minimum wage equivalent only if their remuneration is in all the circumstances broadly equivalent to the remuneration they would receive if they qualified for the national minimum wage.
- (6) In this Act, "UK work" means work which is carried out in the United Kingdom or its territorial waters.

5 Requirement to provide information

- (1) The Secretary of State may by notice require the operator of a service to which this Act applies to provide information to the Secretary of State for the purpose of establishing whether the service is being operated consistently with a national minimum wage equivalence declaration provided by the operator.
- (2) The information referred to in subsection (1) may in particular include—
- (a) information relating to the service;
 - (b) information relating to persons working on ships providing the service and their remuneration.
- (3) Subsection (1) does not require an operator to provide information to the extent that doing so would cause the operator to breach the data protection laws of any country or territory.
- (4) A notice under subsection (1) may require the information to be provided in a manner specified in the notice.
- (5) The operator of a service to which this Act applies is guilty of an offence if the operator—
- (a) fails to provide information required by the Secretary of State under this section,
 - (b) provides information so required that is false or misleading, or
 - (c) provides information so required that becomes false or misleading and fails to inform the Secretary of State within four weeks that it has become so.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction—
- (a) in England and Wales, to a fine, or

- (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

6 Inspections

- (1) A person appointed by the Secretary of State (an “inspector”) may at any reasonable time for the purposes specified in subsection (2) – 5
- (a) board a ship in a harbour in the United Kingdom, or
- (b) enter any premises.
- (2) The purposes are –
- (a) establishing whether a service to which this Act applies is being operated consistently with a national minimum wage equivalence declaration, or 10
- (b) verifying any information provided under section 5.
- (3) A person may be appointed under subsection (1) generally or in a particular case.
- (4) An inspector boarding a ship or entering premises under subsection (1) may – 15
- (a) make such inspection as the inspector considers necessary;
- (b) be accompanied by any other person authorised for the purpose by the Secretary of State (generally or in a particular case);
- (c) require any person whom the inspector has reasonable cause to believe is able to give any information relevant to the purposes referred to in subsection (2) – 20
- (i) to answer such questions as the inspector thinks fit to ask, and
- (ii) to sign a declaration that the answers are true;
- (d) require the production of, and inspect and take copies of, any document the inspector considers relevant; 25
- (e) require any person on the ship or in the premises to afford the inspector such facilities and assistance with respect to any matters or things within that person’s control or in relation to which that person has responsibilities as the inspector considers are necessary.
- (5) A person may under subsection (4)(c) be required to answer questions – 30
- (a) at the time of the inspection or subsequently at a time and place specified by the inspector;
- (b) alone except for –
- (i) any persons whom the inspector may allow to be present, and
- (ii) one person nominated by the person on whom the requirement is imposed. 35
- (6) The power to require the provision of a document under subsection (4)(d) includes power to require the provision in a legible format of any information held in electronic form.
- (7) A person commits an offence if the person – 40
- (a) intentionally obstructs an inspector in the exercise of the inspector’s powers under this section,
- (b) fails without reasonable excuse to comply with a requirement imposed under this section or prevents another person from complying with such a requirement, or 45

- (c) makes a statement which the person knows is false or misleading, or recklessly makes a statement which is false or misleading, in purported compliance with a requirement imposed under this section.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction—
- (a) in England and Wales, to a fine, or
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

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Surcharges

- 7 Imposition of surcharges** 10
- (1) Subsection (2) applies if a harbour authority has requested the operator of a service to which this Act applies to provide a national minimum wage equivalence declaration and—
- (a) the operator has not done so, or has not done so in accordance with regulations under section 3(4), or 15
 - (b) it appears to the authority that the operator has committed an offence under section 3(5).
- (2) The harbour authority may make a determination that it will impose charges on the operator of the service (“surcharges”) whenever ships providing the service enter its harbour until— 20
- (a) such time as the authority is satisfied that—
 - (i) there are no non-qualifying seafarers working on ships providing the service, or
 - (ii) non-qualifying seafarers working on ships providing the service are remunerated in respect of their UK work in relation to the service at a rate that is equal to or exceeds the national minimum wage equivalent, or 25
 - (b) the operator provides a national minimum wage equivalence declaration further to a fresh request under section 3.
- (3) A determination under subsection (2) may be revoked by the harbour authority at any time. 30
- (4) A harbour authority may impose a surcharge on the operator of a service to which this Act applies in accordance with a determination under subsection (2) on any occasion when a ship providing the service enters its harbour.
- (5) The amount of the surcharge is to be determined by a tariff of surcharges specified by the harbour authority in accordance with regulations (but this is subject to the power of the Secretary of State to give directions under section 11). 35
- (6) The tariff of surcharges specified by a harbour authority must be published by the authority in such manner as it thinks fit. 40
- (7) Regulations may make provision as to—
- (a) publication of a determination under subsection (2);
 - (b) how the imposition of a surcharge is to be notified to the operator;
 - (c) the period within which a surcharge must be paid;
 - (d) the manner in which a surcharge must be paid; 45

- (e) notification of a surcharge to the Secretary of State;
 - (f) publication of the fact that a surcharge has been imposed.
- (8) A harbour authority may retain a surcharge paid under this section and apply it for the purposes of—
- (a) any of its functions as harbour authority, or
 - (b) shore-based welfare facilities for seafarers.
- (9) References in the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970 to ship, passenger and goods dues do not include a surcharge.

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8 Objections to surcharges

- (1) An interested party may object to any of the following—
- (a) a harbour authority's determination to impose surcharges;
 - (b) the tariff of surcharges specified by a harbour authority;
 - (c) where a surcharge is imposed by a harbour authority, the imposition of the surcharge or its amount.
- (2) An objection under this section is to be made to the Secretary of State in writing.
- (3) In subsection (1) "interested party" means—
- (a) a person appearing to the Secretary of State to have a substantial interest in the matter objected to, or
 - (b) a body appearing to the Secretary of State to be representative of persons within paragraph (a).
- (4) Where an objection is made under this section, the Secretary of State must—
- (a) send a copy of the objection to the harbour authority, and
 - (b) publish online a notice stating—
 - (i) that the objection has been made and the grounds on which it has been made, and
 - (ii) that representations in relation to the objection may be made to the Secretary of State within the period specified in the notice (which may not be less than six weeks from its publication).
- (5) If any representations are made under subsection (4)(b)(ii), the Secretary of State must—
- (a) send copies to the harbour authority and the objector, and
 - (b) allow them a reasonable time to comment on the representations.
- (6) After the expiry of the period referred to in subsection (4)(b)(ii) and, if relevant, the time referred to in subsection (5)(b), the Secretary of State must, unless the objection is withdrawn, proceed to consider the objection and any representations made.
- (7) The Secretary of State's consideration may include consideration of whether any direction given by the Secretary of State in relation to the surcharge should be varied or withdrawn.
- (8) Once the objection and any representations have been considered under subsection (6), the Secretary of State may decide—
- (a) if the objection is to a determination to impose surcharges—
 - (i) to approve the determination, or

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- (ii) to direct the harbour authority to revoke the determination;
- (b) if the objection is to a tariff—
 - (i) to approve the tariff, or
 - (ii) to direct the harbour authority to revise the tariff;
- (c) if the objection is to the imposition of a surcharge or its amount— 5
 - (i) to approve the imposition and its amount,
 - (ii) to direct the harbour authority to revoke the imposition, or
 - (iii) to direct the harbour authority to increase or decrease its amount.
- (9) The Secretary of State must— 10
 - (a) communicate the decision to the harbour authority and the objector, and
 - (b) publish the decision online.
- (10) The Secretary of State may direct a harbour authority to repay any surcharges that appear to the Secretary of State to be appropriate to be repaid by that authority as the result of a decision under this section (and may vary or revoke any such direction). 15
- (11) Subsections (4) to (9) do not apply to an objection if the Secretary of State considers that the substance of the objection has already been, or is being, considered under this section in connection with another objection. 20

9 Refusal of harbour access for failure to pay surcharge

- (1) A harbour authority may refuse access to its harbour to a ship providing a service to which this Act applies if—
 - (a) the authority has imposed a surcharge on the operator of the service in respect of the entry into its harbour by any ship providing that service, and 25
 - (b) the operator has not paid the surcharge in accordance with provision made by or under this Act.
- (2) It does not matter for the purposes of subsection (1) whether an objection has been made to the surcharge under section 8. 30
- (3) But a harbour authority may not refuse access to a harbour—
 - (a) in cases of *force majeure*;
 - (b) where there are overriding safety concerns;
 - (c) where there is a need to reduce or minimise the risk of pollution;
 - (d) where there is a need to rectify deficiencies on the ship. 35
- (4) Regulations may make provision as to how a harbour authority is to communicate refusal of access under this section.
- (5) Nothing in section 33 of the Harbours, Docks and Piers Clauses Act 1847 prevents refusal of access to a harbour under this section.

Supplementary

10 Prosecution of offences

In England and Wales and Northern Ireland, proceedings relating to offences under this Act may be instituted and carried on by the Secretary of State.

11 Guidance and directions

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- (1) The Secretary of State may give guidance to harbour authorities as to how to exercise their powers under this Act.
- (2) The Secretary of State may give directions to any one or more harbour authorities requiring them –
 - (a) to exercise, or not to exercise, any of their powers under this Act, or
 - (b) to exercise any of their powers under this Act in a particular way.
- (3) Directions under this section may in particular include –
 - (a) directions to impose or not impose a surcharge (whether generally or in any particular case or circumstances);
 - (b) directions to impose a surcharge of an amount specified in the direction instead of the amount determined by the harbour authority's tariff.
- (4) Directions under this section may be varied or revoked.
- (5) The Secretary of State must publish any guidance and directions under this section in such manner as the Secretary of State thinks fit.
- (6) A harbour authority must –
 - (a) have regard to any guidance given to it under this section, and
 - (b) comply with any direction given to it under this section or section 8(8) or (10).
- (7) A harbour authority which fails to comply with a direction given to it under this section or section 8(8) or (10) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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12 Regulations

- (1) A power to make regulations under this Act is exercisable by the Secretary of State by statutory instrument.
- (2) Regulations under this Act may make –
 - (a) different provision for different cases, including for different descriptions of –
 - (i) service to which this Act applies, or
 - (ii) non-qualifying seafarers;
 - (b) provision conferring a discretion on any person;
 - (c) consequential, supplementary, incidental or transitional provision.
- (3) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section does not apply in relation to regulations under section 15.

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*General***13 “Harbour” and “harbour authority”**

- (1) In this Act “harbour” and “harbour authority” –
- (a) in relation to England, Wales and Scotland, have the same meanings as in the Harbours Act 1964, and 5
 - (b) in relation to Northern Ireland, have the same meanings as in the Harbours Act (Northern Ireland) 1970.
- (2) In this Act, references to harbours of a harbour authority are to harbours in respect of which it is the harbour authority.
- (3) Where there is more than one harbour authority in respect of a harbour, the Secretary of State may by direction specify which of them is to be treated as the harbour authority in respect of the harbour for the purposes of this Act. 10
- (4) A direction under subsection (3) –
- (a) may be varied or revoked;
 - (b) must be published by the Secretary of State in such manner as the Secretary of State thinks fit. 15

14 General interpretation

In this Act –

- “false or misleading” means false or misleading in a way which is relevant to the operation of any provision of this Act; 20
- “Maritime Labour Convention” means the Maritime Labour Convention adopted on 23 February 2006 by the General Conference of the International Labour Organisation, as amended from time to time;
- “national minimum wage equivalent” has the meaning given by section 4(2); 25
- “non-qualifying seafarer” has the meaning given by section 2;
- “operator”, in relation to a service to which this Act applies, means the person who has, or has agreed to take over, in respect of any ship providing the service, the duties and responsibilities imposed on shipowners under the Maritime Labour Convention; 30
- “ship” has the meaning given by section 1(3);
- “surcharge” has the meaning given by section 7;
- “UK work” has the meaning given by section 4(6);
- “work” has the same meaning as in the National Minimum Wage Act 1998. 35

15 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) The following provisions of this Act come into force on the day on which this Act is passed –
- (a) any provision so far as conferring a power to make regulations; 40
 - (b) sections 1 and 2, 11 to 14 and this section.

- (3) The provisions of this Act not mentioned in subsection (2) come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may –
 - (a) appoint different days for different purposes;
 - (b) contain transitional provision.
- (5) This Act may be cited as the Seafarers' Wages Act 2022.

Seafarers' Wages Bill [HL]

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To make provision in relation to the remuneration of seafarers who do not qualify for the national minimum wage.

Baroness Vere of Norbiton

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