

SEAFARERS' WAGES BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Seafarers' Wages Bill [HL] as introduced in the House of Lords on 6 July 2022 (HL Bill 38).

- These Explanatory Notes have been produced by Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Seafarers' Wages Bill's focus is on improving remuneration for seafarers with close ties to the UK and is part of the Secretary of State for Transport's nine-point plan,¹ announced on Wednesday 30 March 2022.
- 2 The purpose of the Bill is to grant protection to seafarers working on ships that regularly (at least once every 72 hours) use UK ports by ensuring that they are paid at least an equivalent rate to the UK National Minimum Wage (NMW) while in UK waters, irrespective of the nationality of the seafarer or flag of the vessel. The term "NMW" is used throughout this document reflecting the fact that the Bill makes no changes to National Minimum Wage legislation. In practice, the Government's intention is that NMW will enable seafarers within scope to be accorded the same minimum pay for core hours worked whilst in UK waters as those working on domestic services that already qualify for NMW, i.e. currently £9.50 per hour for those 23 years old and over. The Government considers the creation of such a condition upon port access to be the most effective mechanism to ensure application to ships and therefore seafarers calling frequently at UK ports, while observing international obligations.
- 3 To enable this, the Bill:
 - empowers harbour authorities and the Secretary of State (including through the Maritime and Coastguard Agency (MCA)) to make payment of an equivalent rate to the National Minimum Wage a condition of access to UK ports;
 - explicitly empowers harbour authorities to levy surcharges and suspend access to ports in order to incentivise compliance; and
 - empowers the Secretary of State to make directions in respect of these provisions.

¹ <https://www.gov.uk/government/publications/nine-point-plan-for-seafarers-our-commitments-to-protect-seafarers>

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Policy background

Wage Protection for Seafarers

- 4 Under the existing legislation, some seafarers who work on international routes are not in scope of UK National Minimum Wage (NMW) legislation, even though they have close ties to the UK by virtue of working on services that regularly call at UK ports. This means that at present not all seafarers working on ships that regularly call at UK ports are entitled to NMW or an equivalent and this leaves large pay discrepancies when compared with those entitled to NMW.
- 5 This Bill will encourage more comparable remuneration. This will help to reduce competitive distortion between domestic and international services, and those flagged in the UK and those flagged elsewhere.²
- 6 As UK-flagged ships and UK-resident seafarers are more likely to fall in scope of UK Minimum Wage legislation, UK-based agents are less cost-competitive and UK flagged ships face a disincentive to employ UK resident seafarers.
- 7 The purpose of the Bill is to grant protection to seafarers working on ships that regularly use UK ports, by making access to UK ports conditional on operators of frequent services evidencing that the seafarers onboard are being paid at least an equivalent rate to the UK National Minimum Wage (NMWe) while in UK waters.
- 8 National Minimum Wage is a legally defined term under the National Minimum Wage Act 1998 (the 1998 Act) and this legislation does not amend that Act to extend legal entitlement of NMW to seafarers. Rather, it aims to ensure that they are paid no less than an equivalent sum for the time they spend in UK waters. The Bill will enable seafarers within scope to be accorded the same minimum pay for core hours worked whilst in UK waters as those working on domestic services that already qualify for the National Minimum Wage, i.e. currently £9.50 per hour for those 23 years old and over.
- 9 The seafarers in scope are those working on services that regularly call at UK ports, which is defined as services calling in the UK at least once every 72 hours on average (assessed by reference to 120 services in a year-long period), that do not already qualify for UK National Minimum Wage.
- 10 The Bill empowers harbour authorities to request that operators of specified international services provide a declaration that they are paying those seafarers that are not otherwise entitled to NMW, at least NMWe. Where an operator fails to provide a declaration, the Bill grants a power to harbour authorities to make a surcharge on operators for port calls by the service in question. Where a surcharge is due, but not paid, the harbour authority may deny ships operated by the operator access to the harbour.
- 11 The Bill includes a power for the Secretary of State to give a direction to harbour authorities to exercise the power to suspend port access. The Secretary of State (through the MCA) is also provided with powers to verify the validity of NMWe declarations through a combination of intelligence-led and random spot checks.
- 12 The onus is on ship operators to provide a NMWe declaration, which harbour authorities will require periodically.

² See Impact Assessment, pg 38 <https://www.gov.uk/government/consultations/conditions-for-harbour-access-and-seafarers-pay-rates-scope-and-compliance>

Wider Package of Seafarers' Protections

- 13 On 30 March, the Secretary of State for Transport announced a nine-point plan³ to boost and reform seafarer employment protections and welfare, with the aim that so far as possible, they are paid and treated fairly, irrespective of flag or nationality, whilst seeking to close down legal loopholes that could give employers the ability to avoid doing so. This Bill forms one of the measures in the nine-point plan.
- 14 This is supported by the nine-point plan's ambition to reform working conditions of seafarers by supporting welfare, training, and conditions, while working closely with the MCA to ensure compliance and safety. As seafarer protections and welfare are matters of global maritime policy, the Department for Transport is also engaging internationally to protect seafarers by working with international partners to create bilateral minimum wage corridors, while encouraging more ships to operate under the UK Flag where seafarers can benefit from enhanced protections.
- 15 As well as legislating for new wage protections for seafarers through this Bill, the Department for Transport is also working with the Department for Business, Energy and Industrial Strategy as they develop a statutory code for "fire and rehire" practices and failures to engage in meaningful employee consultations.

³ <https://www.gov.uk/government/publications/nine-point-plan-for-seafarers-our-commitments-to-protect-seafarers>

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Legal background

The National Minimum Wage Act 1998

- 16 The NMW was introduced in 1999 by the 1998 Act. The general right to receive the NMW is set out in section 1(1) of the 1998 Act, which provides that a person who qualifies for the NMW shall be remunerated by their employer in respect of their work in any pay reference period at a rate which is not less than the NMW. Section 1(2) of the 1998 Act provides that a worker above the age of compulsory schooling qualifies for the NMW if they ordinarily work in the UK.
- 17 Section 40 of the 1998 Act provides that, for the purposes of that Act, a person employed to work on board a ship registered in the UK under Part II of the Merchant Shipping Act 1995 (“UK flagged ships”) shall be treated as ordinarily working in the UK unless their employment is wholly outside the UK or they are not ordinarily resident in the UK.
- 18 Section 42 of the 1998 Act provides a power to apply the Act to “offshore employment”. “Offshore employment” is defined as employment for the purpose of activities: in the territorial waters of the UK; connected with exploring the sea-bed or subsoil in the UK sector of the continental shelf; or connected with the exploration or exploitation of a cross-boundary petroleum field. This power is exercised by making an Order in Council and was used to create the National Minimum Wage (Offshore Employment) Order 1999 (the 1999 Order).
- 19 Article 2 of the 1999 Order (amended by the National Minimum Wage (Offshore Employment) (Amendment) Order 2020) deems a person who works or ordinarily works in the territorial waters of the UK or in the UK sector of the continental shelf to be a person who works or ordinarily works in the UK for the purposes of the 1998 Act (and is therefore entitled to the NMW). The Order applies to individuals regardless of whether they are British subjects and to corporate bodies regardless of whether they are incorporated under UK law. However, the Order has no application to any individual employed for the purposes of activities on a ship exercising the right of innocent passage or the right of transit passage.

The National Minimum Wage Regulations 2015

- 20 The National Minimum Wage Regulations 2015 (the 2015 Regulations) set out the detailed rules for determining whether a worker is paid the NMW. They make provision for the NMW rates, exemptions, what payments count towards NMW pay, how to determine what hours have been worked for NMW purposes, and what NMW records need to be kept.

The Harbours, Docks and Piers Clauses Act 1847

- 21 Section 33 of the Harbours, Docks and Piers Clauses Act 1847 (the 1847 Act), as adopted in harbour authority’s private legislation (each harbour authority is established under its own enabling Act), provides for the “open port duty”. It requires harbours, docks and piers to be open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers, subject to the provisions of the 1847 Act and any subsequent Acts authorising the construction or improvement of a harbour, dock or pier and the payment of applicable rates. The open port duty prohibits harbour authorities from denying access to ports to ships physically capable of using them, but does not prevent them from regulating terms on which such access is granted.

The Harbours Act 1964 and the Harbours Act (Northern Ireland) 1970

- 22 The Harbours Act 1964 (the 1964 Act) and the Harbours Act (Northern Ireland) 1970 (the 1970 Act) make provision with respect to harbours for England, Wales and Scotland, and Northern Ireland respectively. Section 57 of the 1964 Act and section 38 of the 1970 Act define “harbour” and “harbour authority”.

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The United Nations Convention on the Law of the Sea

- 23 The United Nations Convention on the Law of the Sea (UNCLOS), to which the UK is a signatory, defines and codifies the standards and principles of international maritime law. Article 17 of UNCLOS provides that, subject to the provisions of the Convention, the ships of all states enjoy the right of innocent passage through the territorial sea.

The Maritime Labour Convention

- 24 The Maritime Labour Convention (MLC), to which the UK is also a signatory, is an international treaty that sets out the minimum working and living conditions for seafarers.

Territorial extent and application

- 25 The provisions of the Bill extend to England, Scotland, Wales and Northern Ireland.
- 26 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Services to which this Act applies

- 27 Clause 1 sets out the scope of the Bill. The Bill 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. This Act does not apply to a service that is for the purpose of leisure or recreation or to a service provided by a fishing vessel. “Ship” means any kind of vessel used in navigation and hovercraft.

Clause 2: Non-qualifying seafarers

- 28 Clause 2 sets out the meaning of non-qualifying seafarers. “Non-qualifying seafarer” means a person who works on a ship whose work on that ship is carried out in relation to the provision of a service within scope of the Bill; and, who fails to qualify for the NMW 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.

Clause 3: Power to request declaration

- 29 Clause 3 empowers statutory harbour authorities to request that operators of services within the scope of the Bill provide a declaration that they pay the seafarers working on their services at least a rate equivalent to the NMW for the time worked in the UK or its territorial waters.
- 30 A harbour authority may not request a NMW equivalence declaration in respect of any year unless it appears to the authority that ships providing the service will have used the harbour on at least 120 occasions in that year.
- 31 This clause also includes a power for the Secretary of State to make regulations to make provision as to when a NMW equivalence declaration may be requested, the form and contents of such declarations, and the manner in which declarations are to be provided.
- 32 Where an operator has provided a NMW equivalence declaration to a harbour authority, it is an offence for that operator to operate the service inconsistently with that declaration and to fail to inform the harbour authority of that fact within four weeks of whichever is the later: the start of the period to which the declaration relates; and the time when the service starts to be operated inconsistently. A person guilty of an offence under this clause is liable on summary conviction in England and Wales to a fine, and in Scotland and Northern Ireland to a fine not exceeding level 5 on the standard scale.

Clause 4: Nature of declaration

- 33 Clause 4 sets out the nature of a NMW equivalence declaration. A national minimum wage equivalence declaration is a declaration to the effect that either there will be no non-qualifying seafarers working on ships providing the service, or non-qualifying seafarers working on ships providing the service will be paid at least the NMW equivalence for their work on that service in the UK or its territorial waters.
- 34 The NMW equivalence will be an hourly rate set out in regulations. Regulations may make provision for:
- the hourly rate at which a non-qualifying seafarer is remunerated in any period in respect of any work, and
 - whether, or the extent to which, a non-qualifying seafarer’s work in relation to the service is in the UK or its territorial waters.

- 35 In making such regulations under this section, the Secretary of State must seek to secure that the amount of remuneration received by non-qualifying seafarers within scope of the Bill is at least broadly equivalent, having regard to all the circumstances, to the remuneration they would have received had they qualified for the NMW.
- 36 In this section, “UK work” means work which is carried out in the United Kingdom or its territorial waters.

Clause 5: Requirement to provide information

- 37 Clause 5 allows the Secretary of State by notice to require operators to provide information for the purpose of establishing whether a service is being operated consistently with a NMWe declaration provided by the operator. This may in particular include information relating to the service and to persons working on the ships providing the service and their remuneration. This is not required where it would breach data protection laws.
- 38 It is an offence for an operator to fail to provide information required by the Secretary of State under this clause or to provide information that is false or misleading. An offence under this clause is punishable on summary conviction to a fine in England and Wales, or to a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.
- 39 For the purpose of this clause information may include, but is not limited to, payslips, seafarer employment agreements, and payroll information.

Clause 6: Inspections

- 40 Clause 6 empowers an inspector appointed by the Secretary of State to board a ship in a harbour in the United Kingdom or enter any premises for the purposes of establishing whether a service is being operated consistently with a NMWe declaration, or of verifying information provided under clause 5.
- 41 Under this clause an inspector may:
- make such inspection as they consider necessary;
 - be accompanied by any other person authorised for the purpose by the Secretary of State;
 - require a person that the inspector has reasonable cause to believe is able to give information relevant to the verification of NMWe declaration to answer questions and sign a declaration that the answers are true;
 - require the production of documents;
 - require any person on the ship or in the premises to provide facilities and assistance for the purposes of the inspector’s functions under this clause, where that is in that person’s control.
- 42 It is an offence for a person to intentionally obstruct an inspector in the exercise of their powers; to fail without reasonable excuse to comply with a requirement imposed by this clause, or to prevent another person from complying with such a requirement; or to make a statement which the person knows is false, or recklessly make a statement which is false, in purported compliance with a requirement imposed under this clause. Such an offence is punishable on summary conviction by a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

- 43 This clause, together with the verification of information in clause 5 above, allows the MCA to play an enforcement role in checking the validity of declarations. This will be done through intelligence-based checks in the event of credible evidence suggesting a possibly false or misleading declaration and random spot checks.

Clause 7: Imposition of surcharges

- 44 Clause 7 empowers a harbour authority to determine to impose a surcharge on an operator whenever a ship providing a service within scope of the Bill enters its harbour, in the event that the operator fails to provide a declaration under clause 3, or if it appears to the authority that the operator has committed an offence under clause 3(5).
- 45 The amount of a surcharge is to be determined by a published tariff of surcharges prescribed by the harbour authority in accordance with regulations under this clause.
- 46 The Bill provides a power to make regulations which may make provision as to:
- publication of a determination to impose surcharges;
 - how the imposition of a surcharge is to be notified to the operator;
 - the period within which a surcharge must be paid;
 - the manner in which a surcharge must be paid;
 - notification of a surcharge to the Secretary of State;
 - publication of the fact that a surcharge has been imposed.
- 47 Surcharges paid under this clause may be retained by the harbour authority and used for the purpose of any of the functions as a harbour authority, or for shore-based welfare facilities for seafarers.
- 48 References in the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970 to ship, passenger and goods dues do not include a surcharge.

Clause 8: Objections to surcharges

- 49 An interested party, as determined by the Secretary of State, may make an objection to a harbour authority's determination to impose a surcharge, the tariff of surcharges specified by a harbour authority, or the imposition of a surcharge or its amount.
- 50 Objections are to be sent to the Secretary of State in writing, who then must send a copy to the harbour authority and publish an online notice stating that the objection has been made, the grounds of objection, and that representations may be made within the time specified in the notice (not less than six weeks from its publication).
- 51 If any representations are made, the Secretary of State must send copies to the harbour authority and the objector and allow them a reasonable time to comment on the representations.
- 52 Unless the objection is withdrawn, the Secretary of State must proceed to consider the objection and any representations made after the expiry of the time specified in the notice and, if relevant, the reasonable time given to comment on representations.
- 53 The Secretary of State, having considered the objection and any representations, may decide to approve the decision to which the objection relates, or to direct the authority either to revoke

the determination, to revise the tariff, to revoke the imposition of a surcharge, or to increase or decrease its amount.

- 54 The Secretary of State must communicate the decision to the harbour authority and the objector and publish it online.
- 55 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 a result of a decision under this clause.
- 56 If a harbour authority does not comply with a direction given by the Secretary of State under this clause, they will be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- 57 Where an objection has been made to a harbour authority's determination to impose a surcharge, an interested person cannot make another objection to that same determination.

Clause 9: Refusal of harbour access for failure to pay surcharge

- 58 Harbour authorities will be able to refuse access to a harbour if the operator has not paid a surcharge as required in accordance with the Bill. This is irrespective of whether an objection has been made under clause 9. This is a key provision to incentivise payment of NMWe and to achieve the policy intention of making payment of NMWe a condition of access to UK harbours.
- 59 There are exceptions where a harbour authority may not refuse access:
- in cases of force majeure;
 - where there are overriding safety concerns;
 - where there is a need to reduce or minimise the risk of pollution;
 - where there is a need to rectify deficiencies on the ship.
- 60 The method of communicating refusal of access will be set out in regulations.
- 61 This clause provides that nothing in section 33 of the Harbours, Docks and Piers Clauses Act 1847 prevents refusal of access to a harbour under this section.

Clause 10: Prosecution of offences

- 62 In England and Wales and Northern Ireland, proceedings relating to offences under the Bill will be prosecuted by the Secretary of State (through the MCA).

Clause 11: Guidance and directions

- 63 This clause gives the Secretary of State the power to make guidance for harbour authorities on how to exercise their powers. It is expected that this guidance will cover, among other things, guidance to supplement regulations under clause 7 regarding the imposition of surcharges, including the amount of a surcharge in a tariff.
- 64 This clause also allows the Secretary of State to issue directions to harbour authorities to exercise or not to exercise their powers under the Act or to exercise them in a particular way. In particular in relation to surcharges, this means the Secretary of State can direct a harbour authority to impose or not impose a surcharge, whether generally or in any particular in any case or circumstances, and to impose a surcharge of an amount specified in the direction instead of the amount determined by the harbour authority's tariff.

- 65 This is intended to provide an incentive for the harbour authority to perform its role objectively, and a safeguard to ensure that action can be taken in the event that there is no move or inducement towards payment of NMWe while in UK territorial waters.
- 66 Harbour authorities must have regard to any guidance under this section and comply with any direction given to them under this clause. Failure to comply with a direction under this clause is an offence punishable on summary conviction to a fine not exceeding level 4 on the standard scale.

Clause 12: Regulations

- 67 This clause allows the Secretary of State to make regulations by statutory instrument, and sets out that regulations made under the Bill are subject to the negative resolution procedure, save in respect of the powers to make regulations under clause 15.
- 68 The Regulations provide for different provision for different cases, for example they would be able to take account of different types of ship services (for example freight ferries and container ships) and to different non-qualifying seafarers, for example there may be a different NMWe rate according to age. They could also confer discretion on specified persons and contain consequential, supplementary, incidental or transitional provisions.

Clause 13: Harbour and Harbour Authority

- 69 This clause provides definitions of “harbour” and “harbour authority”, which align with the definitions in the Harbours Act 1964 in England, Wales and Scotland, and the Harbours Act (Northern Ireland) 1970 in respect of Northern Ireland.
- 70 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 the Bill. This is to avoid any uncertainty about the harbour authority in any case.

Clause 14: General Interpretation

- 71 This clause provides definitions of terms used throughout the Bill.

Clause 15: Extent, commencement and short title

- 72 This clause is self-explanatory. It provides for any provision so far as conferring a power to make regulations under clauses 1, 2 and 11 to 15 to come into force on Royal Assent. All other provisions of the Bill are to come into force on such day as the Secretary of State may appoint by regulations.

Commencement

- 73 Any provision so far as conferring a power to make regulations come into force on the day on which this Act is passed. So do provisions pertaining to guidance, directions, definitions and interpretations (clauses 1, 2 and 11-15).
- 74 The provisions not mentioned come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.

Financial implications of the Bill

- 75 It is not envisaged that the Bill will have any significant incremental financial cost to the Exchequer. There will be resource requirements for the MCA, which will play an enforcement role. The Department for Transport will fund this from its allocation for MCA in the Spending Review. Further details on the wider economic implications of the Bill are to be found in the Department's Impact Assessment.

Compatibility with the European Convention on Human Rights

- 76 Baroness Vere of Norbiton has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the European Convention on Human Rights (ECHR), on introduction of the Bill.
- 77 The Government will publish a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights.

Compatibility with environmental law

- 78 Baroness Vere of Norbiton is of the view that this Bill does not contain any new environmental law, and therefore does not intend to make any statement such as might otherwise be required under section 20 of the Environment Act 2021.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No
Clause 7	Yes	Yes	No	Yes	No	Yes	No
Clause 8	Yes	Yes	No	Yes	No	Yes	No
Clause 9	Yes	Yes	No	Yes	No	Yes	No
Clause 10	Yes	Yes	No	Yes	No	Yes	No
Clause 11	Yes	Yes	No	Yes	No	Yes	No
Clause 12	Yes	Yes	No	Yes	No	Yes	No
Clause 13	Yes	Yes	No	Yes	No	Yes	No
Clause 14	Yes	Yes	No	Yes	No	Yes	No

Subject matter and legislative competence of devolved legislatures

- 79 The proposals relate to a reserved matter (employment matters) and make incidental/consequential changes to non-reserved legislation (ports and harbours matters), and on this basis the proposal is considered to be reserved. The Territorial Offices have agreed this analysis in principle, as have the Government’s UK Constitution Group. Whilst the Bill proposals will not relate to the National Minimum Wage Act 1998 specifically, they may be classed as part of the subject matter of employment rights and duties more generally.
- 80 It is considered that the legislative consent motion process will not be engaged for Scotland, Wales or Northern Ireland.

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