

## **SEAFARERS' WAGES BILL**

### **Memorandum from the Department for Transport to the Delegated Powers and Regulatory Reform Committee**

#### **Introduction**

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Transport ("the Department") to assist with its scrutiny of the Seafarers' Wages Bill ("the Bill"). The Bill was introduced in the House of Lords on 6 July 2022. This Memorandum identifies the provisions of the Bill that confer powers to make delegated legislation and explains in each case why the power has been taken and explains the nature of, and reason for, the procedure selected.
2. The Bill contains 10 provisions that include delegated powers. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

#### **Overview of the Bill**

3. The Bill applies to services for the carriage of persons or goods by ship, with or without vehicles, on international routes to or from the United Kingdom. Fishing vessels and services for the purpose of leisure and recreation are expressly excluded.
4. The Bill empowers harbour authorities to request that operators of these services to provide evidence that they are paying seafarers that are not otherwise entitled to the UK national minimum wage ("non-qualifying seafarers") at least the national minimum wage equivalent ("NMWe"). NMWe is an hourly rate set out in regulations, the payment of which is broadly equivalent, having regard to all the circumstances, to the remuneration a seafarer would have received had they qualified for the national minimum wage.
5. Where an operator fails to provide evidence that they pay non-qualifying seafarers the NMWe, the Bill empowers harbour authorities to impose a surcharge. Where the surcharge is due, but not paid, the harbour authority may deny vessels operated by the operator access to the port.
6. The Bill also empowers the Secretary of State to direct harbour authorities as to how to exercise their powers and provides the Secretary of State with enforcement powers.

#### **Summary of the Bill's provisions**

7. The Bill contains 15 clauses. The main provisions of the Bill provide for the following:
- a. Clauses 3 to 6 make provision in relation to national minimum wage equivalence declarations (“NMWe declarations”). This includes:
    - i. the power for a harbour authority to request that the operator of an international service which uses its harbour on at least 120 occasions in a year, provides a NMWe declaration;
    - ii. provision defining the nature of a NMWe declaration, including the power for the Secretary of State to make regulations as to how the NMWe rate is to be calculated and to make provision as to the administrative requirements for NMWe declarations; and
    - iii. the power for the Secretary of State to require operators of international services to provide information for the purpose of establishing whether a service is being operated consistently with a NMWe declaration, and for a person appointed by the Secretary of State to inspect a ship in a harbour in the UK or any premises for the same purpose or for the purpose of verifying information so provided.
  - b. Clauses 7 and 8 make provision for a harbour authority to impose a surcharge in respect of the use of its harbour in the event that the operator fails to provide a valid NMWe declaration, and for objections to such surcharges. The amount of a surcharge is to be determined by a tariff of surcharges prescribed by the harbour authority in accordance with regulations, and the Secretary of State may also make regulations to make provision as to the procedural and administrative requirements with respect to surcharges.
  - c. Clause 9 provides for a harbour authority to refuse a ship access to the harbour for failure to pay a surcharge. Regulations may make provision as to how a harbour authority is to communicate refusal of access.
  - d. Clause 10 provides that in England and Wales and Northern Ireland, proceedings relating to offences under the Bill may be prosecuted by the Secretary of State.
  - e. Clause 11 provides the power for the Secretary of State to give guidance and directions to harbour authorities as to how to exercise their powers under the Bill.

- f. Clause 12 provides the power to make regulations, which are subject to the negative procedure, save for commencement regulations under clause 15.
- g. Clause 13 defines a “harbour” and “harbour authority”. This clause also gives powers to the Secretary of State to specify which is to be treated as the relevant harbour authority where there is more than one harbour authority in respect of the harbour limits of interest.
- h. Clause 15 provides the power to make commencement regulations to bring into force those provisions of the Bill that do not come into force on Royal Assent.

### **Description and analysis of delegated powers**

- 8. The following section of the Memorandum describes the powers being conferred by the Bill, explains both their purpose and why the matter is to be left to delegated legislation rather than included in the Bill, and specifies what Parliamentary scrutiny procedure (if any) is provided for each power. It deals with the provisions in the order in which they appear in the Bill.

#### ***Clause 3(4) – Power to request a declaration***

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: Negative resolution*

#### **Context and purpose**

- 9. Clause 3 provides the power for a harbour authority to request a NMWe declaration from the operator of an international service which uses its harbour on at least 120 occasions in a year.
- 10. Subsection (4) provides that regulations may make provision:
  - a. restricting the circumstances in which a NMWe declaration may be requested;
  - b. as to the form of NMWe declarations; and
  - c. as to the manner in which NMWe declarations are to be provided.
- 11. This allows the Secretary of State to make provision for the administrative and procedural detail for the request and provision of declarations.

#### **Justification for taking the power**

- 12. The circumstances in which NMWe declarations may be requested, their form and the manner in which they are provided are procedural matters that will

include administrative detail on what should appear on the face of the declaration and how and when this should be provided to a harbour authority.

13. In particular, until the precise method for calculating NMWe (that will be set out in regulations under clause 4(2) to (5)) have been determined, it will not be possible to make a final policy decision as to the form of the declaration. The Department therefore considers it appropriate for these provisions to be set out in secondary legislation.

#### Justification for the procedure

14. The power to make regulations under this clause is subject to the negative procedure. This is considered appropriate as such regulations will simply set out the procedural and administrative detail of what should be included on the face of the NMWe declaration, and how and in what circumstances this should be provided. This is unlikely to be controversial and requiring a higher level of scrutiny would likely be a disproportionate use of Parliamentary time.

#### **Clause 4(2) to (5) – Nature of a declaration**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: Negative resolution*

#### Context and purpose

15. A NMWe declaration is defined as a declaration to the effect that, in the period to which the declaration relates:
- a. there will be no non-qualifying seafarers working on ships providing the service, or
  - b. non-qualifying seafarers working on ships providing the service will be remunerated at a rate that is equal to or exceeds the NMWe, in respect of their work carried out in the UK or its territorial waters in relation to the service.
16. The NMWe is an hourly rate specified in regulations. Regulations may make provision for determining:
- a. the hourly rate at which a non-qualifying seafarer is remunerated in any period in respect of any work, which may in particular include:
    - i. any provision referred to in section 2(2) to (6) of the National Minimum Wage Act 1998 (“the 1998 Act”);
    - ii. provision relating to currency conversion; and

- b. whether, or the extent to which, a non-qualifying seafarer's work in relation to a service is carried out in the UK or its territorial waters.
17. In making regulations under this clause, the Secretary of State must seek to secure that the amount of remuneration received by non-qualifying seafarers is broadly equivalent, having regard to all the circumstances, to the remuneration they would have received had they qualified for the national minimum wage.
  18. The purpose of the power is therefore to allow the technical detail of the method for calculating NMWe to be left to secondary legislation.

Justification for taking the power

19. Regulations made under this power will be limited in scope to the purposes set out above, that is to set out the technical detail of how NMWe should be calculated.
20. For those that are entitled to it, the method for calculating the national minimum wage rate is set out in the National Minimum Wage Regulations 2015 ("the 2015 Regulations"). The Bill does not directly extend entitlement to the national minimum wage to non-qualifying seafarers, and therefore the 2015 Regulations will not apply for the purpose of calculating NMWe. It is however expected that the method for calculating NMWe will be broadly modelled on the 2015 Regulations, with certain modifications to reflect the unique policy and practical considerations as respects seafarers, and the calculation of hours worked in UK territorial waters.
21. It was considered appropriate for the technical detail of how to calculate the national minimum wage rate to be left to secondary legislation (currently the 2015 Regulations) in the 1998 Act, and it is the Department's view that it would likewise be appropriate for the detail of how to calculate NMWe to be left to secondary legislation for present purposes.
22. The 2015 Regulations are amended regularly, as the national minimum wage rate is updated annually. The legislation providing for the method of calculating NMWe will likewise need to be updated on a regular basis to reflect any changes to the 2015 Regulations which may apply to the calculation of NMWe. It may also be necessary to make amendments to the regulations if there are any changes to the UK's international obligations which materially alter the policy for calculating NMWe, for example if there are any relevant amendments to the Maritime Labour Convention 2006, to which the UK is a signatory.
23. Setting out this detail in secondary legislation will allow the flexibility to update the regulations on a regular basis and would avoid unduly taking up Parliamentary time with technical detail.

24. For these reasons, the Department considers that it is appropriate for these measures to be set out in secondary legislation. The overarching policy (empowering harbour authorities to request NMWe declarations) is set out on the face of the Bill, and it is only the technical and procedural detail that is being left to secondary legislation.

#### Justification for the procedure

25. This power to make regulations is subject to the negative procedure.

26. As set out above, regulations providing for the method of calculating NMWe are likely to be broadly modelled on the 2015 Regulations, with certain modifications. While the 2015 Regulations are subject to the affirmative resolution procedure, this means the main substantive provisions (which are likely to be broadly mirrored in regulations under this clause) will already have been subject to appropriate Parliamentary scrutiny. While regulations under this clause will not be identical to the 2015 Regulations, it is expected that they will be sufficiently similar, and reflect the same overriding policy intention.

27. The negative procedure is therefore considered appropriate as the higher level of scrutiny for the 2015 Regulations will provide an appropriate safeguard, by ensuring that important provisions have been debated by Parliament. It would be disproportionate to require Parliament to in effect debate the same issue twice, each time that the 2015 Regulations are amended, as regulations under this clause 4 would likely be updated to reflect these changes at the same time.

#### **Clause 7(5) and (7) – Imposition of surcharges**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: Negative procedure*

#### Context and purpose

28. Clause 7 empowers a harbour authority to make a determination that it will impose surcharges on the operator of a service whenever ships providing that service enter its harbour, if the authority has requested the operator provides a NMWe declaration and:

- a. the operator has not done so, or has not done so in accordance with regulations made under clause 3(4), or
- b. It appears to the authority that the operator has committed an offence, in that it has provided a NMWe declaration, and:
  - i. at the time in the period to which the declaration relates, the service is operated inconsistently with the declaration, and

- ii. the operator has failed to inform the authority of that fact within four weeks of whichever is the later of the start of the period and the time when the service starts to be operated inconsistently.

29. Clause 7(5) provides that the amount of the surcharge is to be determined by a tariff of surcharges prescribed by the harbour authority in accordance with regulations (but this is subject to the power of the Secretary of State to give directions under clause 11).

30. Clause 7(7) confers power on the Secretary of State to make regulations which make provision as to:

- a. publication of a determination to impose surcharges;
- 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;
- e. notification of a surcharge to the Secretary of State;
- f. publication of the fact that a surcharge has been imposed.

31. The purpose of the powers under clause 7 are therefore:

- a. to enable the Secretary of State to set out the framework within which tariffs of surcharges may be set by harbour authorities; and
- b. to provide for the procedural and administrative detail related to the imposition of surcharges.

#### Justification for taking the power

32. While harbour authorities will retain an element of discretion in determining the amount of a surcharge, the regulations under clause 7(5) will set out a framework to ensure consistency of approach across different harbour authorities. The framework for setting the tariff is likely to be subject to change and regular update. It is therefore considered appropriate that this be in secondary legislation in order to allow flexibility.

33. As for regulations under clause 7(7), they will be limited in scope to providing for the procedural and administrative detail set out above. Such detail does not form part of the overarching policy and so it is the Department's view that it is appropriate for this to be left to secondary legislation. Further, there may be a need for procedural changes once the policy comes into force. The power to make regulations will therefore provide additional flexibility to respond for any need for change, and update the regulations accordingly.

#### Justification for the procedure

34. The power under this clause will be subject to the negative procedure.

35. In general, harbour charges are not fixed by legislation, and harbour authorities have experience in formulating charges for harbour services, for example towage and conservancy fees, based on the average metrics of a vessel. Harbour authorities have a commercial interest in being proportionate in terms of how a surcharge would be fixed.

36. It is however considered that there should be some Parliamentary scrutiny in the setting of surcharges as this is a new power conferred on harbour authorities in the Bill. The regulations under this clause 7(5) will achieve this level of scrutiny, and it is considered that the negative procedure would be appropriate in these circumstances as this is within harbour authorities' existing competence.

37. As for the power to make regulations under clause 7(7), this is concerned with the procedural detail of the period and manner in which a surcharge must be paid, and notification and publication requirements. This is unlikely to be controversial or attract Parliamentary interest. It is therefore considered that the negative procedure would be appropriate, as it would be disproportionate for such a power to be subject to a higher level of Parliamentary scrutiny.

### **Clause 8(8) and (10) – Objections to surcharges**

*Power conferred on: Secretary of State*

*Power exercisable by: Direction*

*Parliamentary scrutiny procedure: None*

#### Context and purpose

38. Clause 8 makes provision for an interested party to make an objection to Secretary of State regarding:

- 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.

39. Under clause 8(8), where such an objection is made, and following any representations made in response to the objection, the Secretary of State may decide:

- a. if the objection is to a determination to impose surcharges:
  - i. to approve the determination, or
  - 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 authority to revise the tariff;
- c. if the objection is to the imposition of a surcharge or its amount:
  - 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.

40. Under clause 8(10), the Secretary of State has a power to direct a harbour authority to repay any surcharges that appear to be appropriate to be repaid as a result of a decision under this clause (and may vary or revoke any such direction).

41. A harbour authority must comply with any direction given to it under this clause, and if it fails to do so will be guilty of an offence (clause 11(6)(b) and (7)).

#### Justification for taking the power

42. There is a similar existing power for the Secretary of State to consider objections to certain harbour charges and to make a direction in response in section 31(6) of the Harbours Act 1964 and section 7(6) of the Harbours (Northern Ireland) Act 1970. The power in this clause of the Bill broadly mirrors that power in empowering the Secretary of State to give a direction in determination of objections to surcharges imposed by harbour authorities under clause 7.

43. The Department considers that any directions made under this power will be of an administrative nature and not legislative. The power is limited to the making of a direction that would meet the objection raised, that being limited to an objection to (i) the harbour authority's determination to impose surcharges, (ii) the tariff of surcharges specified by the authority, or (iii) the imposition of the surcharge or its amount. Any such direction will apply only to the operators to which the determination to impose surcharges applies and will likely be as a result of a factual determination, for example that the harbour authority did not have the power to require a surcharge in the circumstances or that the harbour authority had erred in determining the tariff of the surcharge.

44. Clause 8(10) provides an additional safeguard in that if the Secretary of State makes a direction under clause 8(8), for example that the imposition of a surcharge should be revoked or the amount changed, he may also direct that

any excess amount of surcharge that should not have been charged, is repaid by the harbour authority to the operator.

45. In the event that the Committee consider that the power is legislative, it is justified in any event as it provides a safeguard to the discretion of harbour authorities to impose surcharges, ensuring that there is a remedy available for any objections that a surcharge should not have been imposed or that it is charged at the wrong amount. The power would only be used in limited circumstances (in the event of objections) and the direction would be limited in its application to a particular decision of a harbour authority.

#### Justification for the procedure

46. As above, the power is not considered to be legislative and therefore it is appropriate that there be no Parliamentary scrutiny. In any event, given the limited application of the power (to the particular operators and harbour authority) it is the Department's view that it would be disproportionate to require Parliamentary scrutiny for a decision to issue a direction under this power.

#### **Clause 9(4) – Refusal of harbour access for failure to pay surcharge**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: Negative resolution*

#### Context and purpose

47. Clause 9 provides for the harbour authority to refuse a ship access to the harbour for failure to pay a surcharge. This applies where the authority has imposed a surcharge on an operator in respect of the entry into its harbour under clause 7, and the operator has not paid the surcharge. This is irrespective of whether an objection has been raised under clause 8, but a harbour authority cannot refuse such access:

- 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, or
- d. where there is a need to rectify deficiencies on the ship.

48. Clause 9(4) confers power on the Secretary of State to make regulations which make provision as to how a harbour authority is to communicate refusal of access under this clause.

49. The purpose of this power is therefore to permit the procedural detail of how refusal of access will be communicated to be set out in secondary legislation.

### Justification for taking the power

50. Regulations made under this power will be limited in scope to providing for the procedural detail set out above. Such procedural detail does not form part of the overarching policy (that harbour authorities may refuse access to a harbour for failure to pay a surcharge) and as such it is the Department's view that it is appropriate for this to be left to secondary legislation.

51. The methods of communication may need to be updated once the policy has come into force and any operational issues have been determined. The power to make regulations will therefore provide additional flexibility to respond for any need to update the regulations accordingly.

### Justification for the procedure

52. The power under this clause will be subject to the negative procedure. It is concerned with the procedural detail of how a harbour authority is to communicate refusal of access to a harbour. This is unlikely to be controversial or attract Parliamentary interest. It is therefore considered that the negative procedure would be appropriate, as while this warrants some scrutiny, it would be disproportionate to require prior Parliamentary debate.

### **Clause 11(1) – Guidance**

*Power conferred on: Secretary of State*

*Power exercisable by: Guidance*

*Parliamentary scrutiny procedure: None*

### Context and purpose

53. Clause 11(1) provides the power for the Secretary of State to give guidance to harbour authorities as to how to exercise their powers under the Bill. Under subsection (6)(a), harbour authorities must have regard to any guidance issued under this clause.

54. The Bill confers new discretionary powers on harbour authorities and the purpose of guidance under this clause is to assist harbour authorities with how to exercise these new powers.

### Justification for taking the power

55. The power to issue guidance under this clause will enable the Secretary of State to set out in detail how harbour authorities should exercise their powers under the Bill, promoting consistency in application of the Bill across different harbour authorities. For example, harbour authorities may be assisted by further guidance on the imposition of surcharges under clause 7 of the Bill (and regulations made under that clause) to provide assurance that they will be exercising their powers in the same way as their competitors.

56. While guidance issued by the Secretary of State under this clause will not be mandatory, harbour authorities must have regard to it in deciding how to exercise their powers under the Bill. It is intended that this guidance will assist harbour authorities in exercising their powers under the Bill and provide consistency and certainty across harbour authorities and operators, rather than imposing additional mandatory requirements on them. The Department therefore considers appropriate for this detail to be set out in guidance and not legislation.

#### Justification for the procedure

57. The guidance will contain operational and technical detail to assist harbour authorities in exercising their powers, and the Department's view is that this does not require Parliamentary oversight. Under clause 11(5) the Secretary of State must publish any guidance in such manner as the Secretary of State thinks fit, which will ensure transparency.

#### **Clause 11(2) – Directions**

*Power conferred on: Secretary of State*

*Power exercisable by: Directions*

*Parliamentary scrutiny procedure: None*

#### Context and purpose

58. Clause 11(2) provides that 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 the Bill, or
- b. to exercise any of their powers under the Bill in a particular way.

59. In particular, under subsection (3), the Secretary of State may use this power to give directions to direct a harbour authority:

- a. to impose or not to impose a surcharge (whether generally or in any particular case or circumstances); or
- b. to impose a surcharge of an amount specified in the direction instead of the amount determined by the harbour authority's tariff.

60. Under subsections (6)(b) and (7), a harbour authority must comply with any direction given to it, and if it fails to comply it will be guilty of an offence.

61. Directions made under this clause will be mandatory and the main purpose of this power is to allow the Secretary of State to direct harbour authorities to exercise their powers under the Bill if they are not doing so (or not exercise

their powers in particular circumstances), or to direct them to exercise any of their powers in a particular way.

#### Justification for taking the power

62. It is expected that harbour authorities will exercise their discretionary powers under the Bill in a manner that is consistent with the policy intention. The Department does however consider it necessary to have a back-up power for the Secretary of State to issue directions to harbour authorities in the event that they do not exercise their powers or that they exercise them in a way that is inconsistent with the wider policy intention.
63. A particular area in which it is expected the direction making power may be needed is with respect to surcharges under clause 7. For example, there is a risk that harbour authorities may decline to impose a surcharge in the event that an operator fails to provide a NMWe declaration, in which case there will not be any incentive for operators to pay NMWe to non-qualifying seafarers. In such circumstances, it is anticipated that the Secretary of State may decide to issue a direction to the harbour authority requiring it to charge the surcharge.
64. Clause 11(3) sets out the particular circumstances in which it is expected that directions may be made as respects surcharges, however the general power in subsection (2) may also be used in other circumstances under the Bill, for example if a harbour authority does not request a NMWe, or does not refuse harbour access for failure to pay a surcharge.
65. In addition to the power to require a harbour authority to exercise its powers, or to exercise them in a particular way, the Secretary of State also has the power to direct that a harbour authority does not exercise its powers under the Bill. This power may be needed where, for example, the Secretary of State is aware of certain circumstances that would make it inappropriate to refuse access to a harbour under clause 9, but which circumstances are outside the scope of the exceptions in clause 9(3) (which sets out the circumstances in which a harbour authority may not refuse access to a harbour).
66. The Department has considered whether any powers of direction under this clause would be better exercised by a power to make regulations, however the policy position is that there needs to be flexibility in the way in which harbour authorities exercise their discretionary powers, and for the Secretary of State to be able to react to particular factual and operational circumstances by way of making a direction, which regulations would not allow. For these reasons, the Department's view is that it is appropriate for the Bill to include these powers of direction.

#### Justification for the procedure

67. The intention is that directions will be given to specific harbour authorities in response to particular factual circumstances and would largely be an administrative exercise. For example, the Secretary of State may direct a particular harbour authority to require an operator to provide a NMWe declaration in circumstances where they are routinely failing to exercise their powers under the Bill.

68. As set out above, flexibility is needed for the Secretary of State to be able to react to particular factual and operational circumstances by way of making a direction. It would neither be practical, nor a good use of Parliamentary time, for the Secretary of State to make regulations and seek Parliamentary scrutiny every time this is required.

69. It is therefore the Department's view it is appropriate that this power be by way of direction and that there be no Parliamentary scrutiny. Directions will be administrative in nature, of limited application, and will need to be given in response to a particular set of facts. The directions must be published under subsection (5), which will ensure transparency.

### ***Clause 12(2) – Regulations – minor and consequential provisions***

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: Negative resolution*

#### Context and purpose

70. Clause 12(2) provides the Secretary of State with a general power to make regulations which make:

- a. different provision for different cases, including for different descriptions of service or non-qualifying seafarers;
- b. provision conferring a discretion on any person;
- c. consequential, supplementary, incidental or transitional provision.

2. Clause 12(3) confirms that all regulations under the Bill are subject to the negative procedure.

#### Justification for taking the power

71. This power clarifies the scope of other regulation making powers in the Bill, as well as providing a general power to make minor and consequential amendments. This power can only be exercised in connection with a provision of regulations made under this Bill and is therefore limited in scope.

72. It is not possible to establish in advance all consequential provisions that may be needed in connection with regulations made under the Bill and the power is therefore needed to ensure that any regulations operate as intended and to provide legal certainty.

#### Justification for the procedure

73. The Department considers that the negative procedure would give Parliament the appropriate level of scrutiny, as regulations made under this power will only be to make minor and consequential amendments.

#### **Clause 13(3) – “Harbour” and “harbour authority”**

*Power conferred on: Secretary of State*

*Power exercisable by: Directions*

*Parliamentary scrutiny procedure: None*

#### Context and purpose

74. Clause 13 defines “harbour” and “harbour authority” for the purpose of the Bill by reference to the Harbours Act 1964 and Harbours Act (Northern Ireland) 1970.

75. Clause 13(3) provides power for the Secretary of State to specify by direction which harbour authority is to be treated as the harbour authority in respect of a harbour where there is more than one harbour authority in respect of that harbour.

76. The purpose of this power is to provide clarity on who is to be treated as the harbour authority for the purpose of the Bill when there may be overlapping authorities in a particular harbour.

#### Justification for taking the power

77. Due to the structure and geography of UK harbour authorities, it is not uncommon for there to be more than one harbour authority with overlapping areas of jurisdiction encompassing a particular harbour. The policy intention is that it should normally be the “receiving” harbour authority which assumes the powers under the Bill, i.e. the harbour authority with direct operational responsibility for the relevant berths, although exceptionally, this might not be the case if that harbour authority is associated with a ship operator subsidiary.

78. It is expected that harbour authorities will take a common sense approach and that if, for example, a vessel is passing through one harbour authority (harbour authority A) to get to its berth in another harbour authority (harbour authority B) then harbour authority A would not seek to exercise its powers under the Bill as respects that vessel. It is therefore unlikely to be a significant problem in practice but the Department considers it necessary to have the

power to make a direction to specify a nominated harbour authority in the event that there is any uncertainty in a particular case.

#### Justification for the procedure

79. There is no procedure for this power on the basis that the use of directions will be limited to operational and administrative matters, and will only affect the harbour authorities for a particular harbour. The Department therefore considers it appropriate that there be no Parliamentary scrutiny of the use of this power.

#### **Clause 15(3) and (4): Commencement**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary scrutiny procedure: None*

#### Context and purpose

80. Subsection (2) provides that any provision so far as conferring a power to make regulations, clauses 1, 2 and 11 to 15 of the Bill come into force on Royal Assent. All other provisions come into force on such day as the Secretary of State may appoint by regulations. Regulations may appoint different days for different purposes and contain transitional provision.

#### Justification for taking the power

81. The power to make commencement regulations will enable the Secretary of State to commence the provisions of the Bill at an appropriate time.

#### Justification for procedure

82. As usual with such commencement powers, it is not subject to any Parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.