

SEAFARERS' WAGES BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

These Explanatory Notes relate to the Commons Amendments to the Seafarers' Wages Bill [HL] as brought from the House of Commons on 8 February 2023 (HL Bill 103).

- These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Commons amendments themselves, refer to Bill 184, the Bill as first printed for the Commons.
- These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- Commons Amendments 1 to 64 were tabled in the name of the Minister.

Table of Contents

Subject	Page of these Notes
What these notes do	1
Commentary on Commons amendments	3
Commons Amendments to Clause 1: Services to which this Act applies	3
Commons Amendment 1	3
Commons Amendments to Clause 3: Power to request declaration	3
Commons Amendment 2	3
Commons Amendment 3	3
Commons Amendments 4 and 5	3
Commons Amendment 6	3
Commons Amendment 7	4
Commons Amendment to Clause 4: Nature of declaration	4
Commons Amendment 8	4
Commons Amendment after Clause 4	4
Commons Amendment 9	4
Commons Amendments to Clause 5: Requirement to provide information	4
Commons Amendment 10	4
Commons Amendment 11	4
Commons Amendment 12	5
Commons Amendment 13	5
Commons Amendments 14 and 15	5
Commons Amendment 16	5
Commons Amendments to Clause 6: Inspections	5
Commons Amendment 17	5
Commons Amendment 18	5
Commons Amendment 19	5
Commons Amendments 20 and 21	6
Commons Amendment 22	6
Commons Amendment 23	6
Commons Amendments after Clause 6	6
Commons Amendments 24, 25 and 26	6
Commons Amendments to Clause 7: Imposition of surcharges	7
Commons Amendments 27, 28 and 33	7
Commons Amendments 29 and 31	7
Commons Amendments 30 and 32	8
Commons Amendment 34	8
Commons Amendment 35	8
Commons Amendment 36	8
Commons Amendment 37	8
Commons Amendments to Clause 8: Objections to surcharges	8
Commons Amendments 38, 40 and 42	8
Commons Amendment 39	9
Commons Amendment 41	9

These Explanatory Notes relate to the Commons Amendments to the Seafarers' Wages Bill as brought from the House of Commons on 8 February 2023 (HL Bill 103)

Commons Amendments to Clause 9: Refusal of harbour access for failure to pay surcharge	9
Commons Amendments 43 and 49	9
Commons Amendments 44 and 45	9
Commons Amendment 46	9
Commons Amendment 47	9
Commons Amendment 48	9
Commons Amendments after Clause 9	9
Commons Amendment 50	9
Commons Amendments to Clause 11: Guidance and directions	10
Commons Amendments 51, 55 and 56	10
Commons Amendments 52, 53 and 54	10
Commons Amendment 57	10
Commons Amendments to Clause 12: Regulations	11
Commons Amendments 58 and 59	11
Commons Amendments to Clause 13: “Harbour” and “harbour authority”	11
Commons Amendments 60 and 61	11
Commons Amendments to Clause 14: General interpretation	11
Commons Amendments 62 and 63	11
Commons Amendment to Clause 15: Extent, commencement and short title	11
Commons Amendment 64	11

Commentary on Commons amendments

Commons Amendments to Clause 1: Services to which this Act applies

Commons Amendment 1

- 1 The concept of “service” is not defined on the face of the Bill. This amendment would provide for a power to make regulations for the purpose of determining what is or is not a “service” for the purposes of the Bill.

Commons Amendments to Clause 3: Power to request declaration

Commons Amendment 2

- 2 This amendment would change the power of harbour authorities to request a national minimum wage equivalence declaration (“equivalence declaration”) into a duty to do so where they have reasonable grounds to believe that ships providing the service will call at their harbour at least 120 times in a relevant year. This duty would be subject to any direction given by the Secretary of State not to request an equivalence declaration (see Amendment 52). The amendment would provide a power to make regulations specifying the period within which harbour authorities must request an equivalence declaration. A harbour authority which did not comply with the duty would commit an offence and be 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.

Commons Amendment 3

- 3 This amendment would provide a power to make regulations specifying the period within which equivalence declarations must be provided following a request by a harbour authority.

Commons Amendments 4 and 5

- 4 These are two of several amendments to the Bill which would abbreviate “national minimum wage equivalence declaration” to “equivalence declaration”.

Commons Amendment 6

- 5 This amendment would insert the definition of a “relevant year” into the Bill, this being a period of 12 months beginning with a date specified in regulations and then each successive period of 12 months. As previously drafted equivalence declarations would have related to a period of a year, but this might start at different times for different harbour authorities and in respect of different operators. This amendment would ensure that equivalence declarations would relate to fixed “relevant years” which would be the same for all harbours and operators.

Commons Amendment 7

- 6 This amendment would remove the offence of operating inconsistently with an equivalence declaration from clause 3. These would be replaced by the offences in Amendment 9 which are adapted to the proposed new system for equivalence declarations.

Commons Amendment to Clause 4: Nature of declaration

Commons Amendment 8

- 7 This amendment would allow equivalence declarations to be provided before, during or after the year to which they relate, and for declarations to relate to part of a year.

Commons Amendment after Clause 4

Commons Amendment 9

- 8 This amendment would insert a new clause providing for an offence of operating inconsistently with an equivalence declaration, in place of the offence in clause 3(5) and (6) which is removed by Amendment 7. The new clause would ensure that the offence covers all of the circumstances in which equivalence declarations may be provided, namely before, during or after the year to which they relate, and the fact that they may relate to part of a year.
- 9 The amendment would also expand the criminal offence by making it an offence to operate a service inconsistently with a declaration from the start of a relevant year or at the time a declaration is provided during a relevant year, irrespective of the operator notifying the harbour authority of this fact.
- 10 Finally, the amendment would introduce a new criminal offence where an operator provides a declaration which is false or misleading in so far as it concerns the operation of a service for a period in the past.
- 11 A person who commits either the expanded or new criminal offence under this clause would be 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.

Commons Amendments to Clause 5: Requirement to provide information

Commons Amendment 10

- 12 This amendment is consequential on Amendment 8. The amendment would ensure that the Secretary of State has the power to require an operator to provide information about how a service was operating in the past.

Commons Amendment 11

- 13 This is one of several amendments which would abbreviate “national minimum wage equivalence declaration” to “equivalence declaration”.

Commons Amendment 12

- 14 This amendment would extend the Secretary of State's power to require information and is consequential on the new offence of providing a false or misleading declaration introduced by Amendment 9. The Secretary of State would be able to require an operator to provide information to establish whether an equivalence declaration is false or misleading in so far as it concerns the operation of a service before the declaration was provided.

Commons Amendment 13

- 15 This amendment would make clear that the saving in subsection (3) of clause 5 applies in relation to the United Kingdom's data protection legislation, as well as the data protection laws of other countries or territories. It would also make clear that in determining whether the provision of information would cause a breach of that legislation or those laws the requirement imposed by subsection (1) of the clause must be taken into account.

Commons Amendments 14 and 15

- 16 These amendments would enable a notice requiring the provision of information under clause 5 to specify the period within which it must be provided and extend the criminal offence for failure to provide information to include failure to provide it in the manner and within the period specified.

Commons Amendment 16

- 17 This amendment would move clause 5 in consequence of other amendments to the Bill. All of the enforcement clauses within the Bill would then be grouped together.

Commons Amendments to Clause 6: Inspections

Commons Amendment 17

- 18 This amendment is consequential on Amendment 8. The amendment would extend the Secretary of State's powers of inspection so that they can be used to establish how a service was operating in the past.

Commons Amendment 18

- 19 This is one of several amendments which would abbreviate "national minimum wage equivalence declaration" to "equivalence declaration".

Commons Amendment 19

- 20 This amendment is consequential on the new offence of providing a false or misleading declaration introduced by Amendment 9. The amendment would extend the Secretary of State's powers of inspection so that they can be used to establish whether an equivalence declaration is false or misleading in so far as it concerns the operation of a service before the declaration was provided.

Commons Amendments 20 and 21

- 21 These amendments are consequential on Amendments 2, 24 to 26 and 43 which impose duties on harbour authorities. The amendments would extend the Secretary of State's powers of inspection so that they can be used to establish whether, or to what extent, a harbour authority is complying with its duties under the Bill, or to verify information provided by a harbour authority under the new clause introduced by Amendment 50.

Commons Amendment 22

- 22 This amendment is consequential on the abbreviation of "national minimum wage equivalence declaration" to "equivalence declaration" (see amendments 4, 5, 11 and 18). The amendment would change the word "declaration" in clause 6(4)(c) to "statement" to ensure that it is not confused with an equivalence declaration.

Commons Amendment 23

- 23 This amendment would move clause 6 in consequence of other amendments to the Bill. All of the enforcement clauses within the Bill would then be grouped together.

Commons Amendments after Clause 6

Commons Amendments 24, 25 and 26

- 24 The new clauses inserted by Amendments 24, 25 and 26 would change harbour authorities' power to impose surcharges into a duty and set out the circumstances in which they must impose surcharges. The circumstances would reflect the fact that equivalence declarations may be provided before, during or after the year to which they relate and may relate to part of a year (see Amendment 8).
- 25 The new clauses would require harbour authorities to impose surcharges:
- when an equivalence declaration is not provided in time (Amendment 24);
 - when a declaration relates to only part of a year (Amendment 25);
 - when a service is operated inconsistently with a declaration (Amendment 26).
- 26 Amendment 24 would insert a new clause which would apply if a harbour authority requested that an operator provide an equivalence declaration and it was not provided in the form and manner and before the end of a period prescribed in regulations. Where the new clause applied a harbour authority would be required to impose surcharges in respect of each occasion when a ship providing the service entered its harbour between the beginning of the relevant year and whichever was the earlier of the end of the relevant year or the operator providing an equivalence declaration. Where an operator provided a declaration with respect to the relevant year such that it was no longer required to pay surcharges, the harbour authority would be required in the circumstances in subsection (5) to refund certain surcharges already paid.
- 27 Amendment 25 would insert a new clause which would apply if a harbour authority requested an operator to provide an equivalence declaration and the operator could not demonstrate that it had paid the national minimum wage equivalent for the period of the declaration that related to the past. In those circumstances the operator would provide a

declaration that related to part of the year only and the harbour authority would be required to impose surcharges in respect of each occasion when a ship providing the service entered its harbour between the beginning of the relevant year and the time the declaration was provided.

- 28 Amendment 26 would insert a new clause which would require surcharges to be imposed where a service is operated inconsistently with an equivalence declaration or where a declaration is false or misleading. The clause would require a harbour authority to impose surcharges on each occasion that ships providing a service enter its harbour during the relevant year in three scenarios:
- Where an operator notifies an authority that after an equivalence declaration was provided the service has been operated inconsistently with that declaration (subsection (1)(b)(i));
 - Where an authority has reasonable grounds to believe that the service has been operated inconsistently with a declaration (subsection (1)(b)(ii));
 - Where an authority has reasonable grounds to believe that a declaration is false or misleading in so far as it concerns the operation of a service before it was provided (subsection (4)).
- 29 Pursuant to subsections (3) and (6) of the new clause if the authority is provided with a fresh equivalence declaration by the operator it would be required to cease imposing surcharges in respect of occasions when ships providing the service enter the harbour after the fresh declaration is provided.

Commons Amendments to Clause 7: Imposition of surcharges

Commons Amendments 27, 28 and 33

- 30 Amendment 27 would remove harbour authorities' discretionary power to impose surcharges. This is consequential on Amendments 24 to 26 which would impose a duty on harbour authorities to impose surcharges in certain circumstances. These changes would mean that there is no longer a need for a harbour authority to first make a determination that it will impose surcharges, and so this would be removed by Amendment 27. Amendment 33 would make a consequential amendment to remove the power for regulations to make provision as to the publication of a determination.
- 31 Amendment 28 would be a minor drafting change which is consequential on Amendments 24 to 26.

Commons Amendments 29 and 31

- 32 Amendment 29 would move the power to set a tariff of surcharges from harbour authorities to the Secretary of State (who would exercise this power through regulations). As a consequence, Amendment 31 would remove the requirement for harbour authorities to publish their tariffs of surcharges.

Commons Amendments 30 and 32

- 33 Amendment 30 would remove the provision that the amount of a surcharge is subject to the Secretary of State's direction-making power and is consequential on Amendment 54.
- 34 Amendment 32 would provide that a duty to impose a surcharge is subject to the Secretary of State's power to direct that they do not impose a surcharge (see Amendment 52).
- 35 Amendment 32 would also insert a new criminal offence. A harbour authority which did not comply with the duty to impose a surcharge would commit an offence and be 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.

Commons Amendment 34

- 36 This amendment would be a drafting clarification to make it clear that regulations may provide for notification to the Secretary of State of the imposition of a surcharge.

Commons Amendment 35

- 37 This amendment would provide a power to make regulations to ensure that harbour authorities notified the Secretary of State about surcharges which remained unpaid after a specified period following their imposition. This would ensure that the Secretary of State was aware when there was a risk that a harbour authority would be required to refuse access to its harbour.

Commons Amendment 36

- 38 This amendment would remove the power of harbour authorities to apply surcharges for their own functions, thus limiting the expenditure of funds from surcharges to shore-based welfare facilities for seafarers.

Commons Amendment 37

- 39 This amendment would provide a definition of "surcharge".

Commons Amendments to Clause 8: Objections to surcharges

Commons Amendments 38, 40 and 42

- 40 Amendment 38 is consequential on Amendments 27 and 29. Harbour authorities would no longer make determinations to impose surcharges (Amendment 27) or specify tariffs of surcharges (Amendment 29) and so this amendment would remove the ability to object to these. This amendment would also provide that objections to the amount of a surcharge may only be made on the grounds that the amount is not in accordance with the tariff of surcharges specified in regulations, which would be necessary if the tariff of surcharges were set by the Secretary of State in regulations (Amendment 29). Amendment 40 would be a consequential drafting change.
- 41 Amendment 42 would be a consequential amendment to what the Secretary of State may decide having considered an objection.

Commons Amendment 39

- 42 This amendment would require the Secretary of State to specify a time limit for objections to surcharges in regulations.

Commons Amendment 41

- 43 This amendment would remove the ability of the Secretary of State, when considering objections to surcharges, to consider whether any direction given by the Secretary of State in relation to the surcharge should be varied or withdrawn. This is consequential on Amendments 52 and 54 which would remove the power of the Secretary of State to direct a harbour authority to impose surcharges.

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

Commons Amendments 43 and 49

- 44 Amendment 43 would impose a duty on harbour authorities to refuse access to their harbour in the circumstances set out in the Bill (as opposed to giving them a power to do so).
- 45 Amendment 49 would make it a criminal offence for a harbour authority not to comply with this duty. A harbour authority would be 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.

Commons Amendments 44 and 45

- 46 These amendments are consequential on Amendment 43 and would clarify the circumstances in which refusal of harbour access is required by making it clear that access can only be refused once the period for paying the surcharge has expired.

Commons Amendment 46

- 47 This amendment is consequential on the new clause to which it refers (see Amendment 24).

Commons Amendment 47

- 48 This amendment is consequential on Amendment 43 and would provide that in the scenarios listed in subsection (3), a harbour authority must not refuse access to its harbour.

Commons Amendment 48

- 49 This amendment would provide that a harbour authority's duty to refuse access is subject to the Secretary of State's power to direct that they do not refuse access (see Amendment 52).

Commons Amendments after Clause 9

Commons Amendment 50

- 50 Amendment 50 would insert a new clause which would provide a power for the Secretary of State to require harbour authorities to provide information for the purpose of establishing whether, or to what extent, they are complying with their duties under the Bill. This is

consequential on Amendments 2, 24 to 26, and 43, which would convert harbour authorities' powers into duties.

- 51 The structure of this new clause would mirror the power to require information from operators in clause 5 (as amended), and would include:
- An indicative list of the information which the Secretary of State may require;
 - A saving for data protection legislation;
 - That a notice requiring information may require it to be provided in a specified manner and period; and
 - That a harbour authority which does not provide the information required, or that provides information that is false or misleading, commits an offence and 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.

Commons Amendments to Clause 11: Guidance and directions

Commons Amendments 51, 55 and 56

- 52 Amendment 51 would remove the Secretary of State's power to give statutory guidance to harbour authorities as to how to exercise their powers under the Bill. This is consequential on Amendments 2, 24 to 26, and 43, which would convert harbour authorities' powers into duties and mean they would no longer have any discretionary powers under the Bill on which the Secretary of State might give guidance.
- 53 Amendments 55 and 56 are consequential on Amendment 51. Amendment 55 would remove the requirement for the Secretary of State to publish any guidance and Amendment 56 would remove the duty for harbour authorities to have regard to such guidance.
- 54 Amendment 56 would also remove the requirement for harbour authorities to comply with any direction given by the Secretary of State. This requirement is unnecessary because it is an offence for a harbour authority to fail to comply with such a direction.

Commons Amendments 52, 53 and 54

- 55 Amendments 52 and 53 would redefine the circumstances in which directions may be given to harbour authorities by the Secretary of State, and are consequential on Amendments 2, 24 to 26, and 43, which would convert harbour authorities' powers into duties. The amendments would limit the Secretary of State's direction-making power to instructing harbour authorities not to comply with their duties under the Bill, or to comply with them in a particular way.
- 56 Amendment 54 would remove subsection (3) from clause 11 and is consequential on Amendments 52 and 53.

Commons Amendment 57

- 57 This amendment would increase the penalty for the offence of failing to comply with a direction from a fine not exceeding level 4 on the standard scale to a fine in England and

Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Commons Amendments to Clause 12: Regulations

Commons Amendments 58 and 59

- 58 These amendments would make the regulation-making power in Amendment 1 subject to the affirmative resolution procedure. All other regulation-making powers in the Bill would remain subject to the negative procedure.

Commons Amendments to Clause 13: “Harbour” and “harbour authority”

Commons Amendments 60 and 61

- 59 These amendments would change the Secretary of State’s direction-making power in clause 13 into a regulation-making power. The purpose of the power would remain the same, namely to allow the Secretary of State to specify which harbour authority is to be treated as the harbour authority for the purpose of the Bill where there is more than one harbour authority in respect of a harbour.

Commons Amendments to Clause 14: General interpretation

Commons Amendments 62 and 63

- 60 These amendments would insert new definitions into clause 14, consequential on Amendments 2, 6, 13 and 50.

Commons Amendment to Clause 15: Extent, commencement and short title

Commons Amendment 64

- 61 This amendment would remove the privilege amendment inserted in the Lords. Parliamentary procedure requires a privilege amendment to be included when a Bill starts in the Lords and has financial implications. It is then removed in the Commons.

SEAFARERS' WAGES BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

These Explanatory Notes relate to the Commons Amendments to the Seafarers' Wages Bill as brought from the House of Commons on 8 February 2023 (HL Bill 103).

Ordered by the House of Lords to be printed, 8 February 2023

© Parliamentary copyright 2023

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS