

Seafarers' Wages Bill [HL]

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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[AS AMENDED IN PUBLIC BILL COMMITTEE]

TO

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

BE IT ENACTED by the King'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 Request for declaration

- (1) Subsection (2) applies where a harbour authority has reasonable grounds to believe that ships providing a service to which this Act applies will enter, or have entered, its harbour on at least 120 occasions during a relevant year. 5
- (2) The harbour authority must, within such period as is determined by regulations, request that the operator of the service provide the authority with a national minimum wage equivalence declaration (in the rest of this Act, an “equivalence declaration”) in respect of the service for the relevant year.
- (3) The duty under subsection (2) is subject to any direction given by the Secretary of State under section 15(1)(a). 10
- (4) A harbour authority which fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Regulations may make provision— 15
- (a) as to the period within which equivalence declarations are to be provided;
 - (b) as to the form of equivalence declarations;
 - (c) as to the manner in which equivalence declarations are to be provided.
- (6) In this Act, “relevant year” means— 20
- (a) the period of 12 months beginning with a date specified in regulations, and
 - (b) each successive period of 12 months.

4 Nature of declaration

- (1) An equivalence declaration in respect of a service for a relevant year is a declaration within any of subsections (2) to (5). 25
- (2) A declaration is within this subsection if it is provided before the beginning of the relevant year and it is to the effect that— 30
- (a) in the relevant year there will be no non-qualifying seafarers working on ships providing the service, or
 - (b) in the relevant year 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.
- (3) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that— 35
- (a) in what remains of the relevant year there will be no non-qualifying seafarers working on ships providing the service, or
 - (b) in what remains of the relevant year 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
- (4) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that—

- (a) in so much of the relevant year as has already occurred –
 - (i) there have been no non-qualifying seafarers working on ships providing the service, or
 - (ii) non-qualifying seafarers working on ships providing the service have been 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, and 5
- (b) in what remains of the relevant year –
 - (i) there will be no non-qualifying seafarers working on ships providing the service, or 10
 - (ii) 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.
- (5) A declaration is within this subsection if it is provided after the end of the relevant year and it is to the effect that – 15
 - (a) in the relevant year there were no non-qualifying seafarers working on ships providing the service, or
 - (b) in the relevant year non-qualifying seafarers working on ships providing the service were 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. 20
- (6) For the purposes of this Act, the national minimum wage equivalent is an hourly rate specified in regulations.
- (7) Regulations may make provision for determining for the purposes of this Act – 25
 - (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. 30
- (8) Regulations under subsection (7)(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.
- (9) 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. 35 40
- (10) In this Act, "UK work" means work which is carried out in the United Kingdom or its territorial waters.

5 Offence of operating service inconsistently with declaration

- (1) The operator of a service to which this Act applies is guilty of an offence if – 45
 - (a) the operator provides a harbour authority with an equivalence declaration in respect of the service for a relevant year, and
 - (b) subsection (2) or (3) applies.

- (2) This subsection applies if the equivalence declaration is provided before the beginning of the relevant year and—
- (a) the service is operated inconsistently with the declaration at the beginning of the relevant year, or
 - (b) at any later time during the relevant year the service starts to be operated inconsistently with the declaration and the operator fails to notify the harbour authority within four weeks of—
 - (i) the fact that the service has started to be so operated, and
 - (ii) the time when it started to be so operated.
- (3) This subsection applies if the equivalence declaration is provided during the relevant year and—
- (a) at the time the declaration is provided the service is being operated inconsistently with the declaration, or
 - (b) at any later time during the relevant year the service starts to be operated inconsistently with the declaration and the operator fails to notify the harbour authority within four weeks of—
 - (i) the fact that the service has started to be so operated, and
 - (ii) the time when it started to be so operated.
- (4) A person guilty of an offence under this section 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 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 or at any time was being operated consistently with an 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.

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7 Inspections

- (1) A person appointed by the Secretary of State (an “inspector”) may at any reasonable time for the purposes specified in subsection (2)—
- (a) board a ship in a harbour in the United Kingdom, or
 - (b) enter any premises.

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- (2) The purposes are—
- (a) establishing whether a service to which this Act applies is or at any time was being operated consistently with an equivalence declaration, or
 - (b) verifying any information provided under section 6.

- (3) A person may be appointed under subsection (1) generally or in a particular case.

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- (4) An inspector boarding a ship or entering premises under subsection (1) may—
- (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)—

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- (i) to answer such questions as the inspector thinks fit to ask, and
 - (ii) to sign a statement that the answers are true;

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- (d) require the production of, and inspect and take copies of, any document the inspector considers relevant;
- (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.

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- (5) A person may under subsection (4)(c) be required to answer questions—
- (a) at the time of the inspection or subsequently at a time and place specified by the inspector;

- (b) alone except for—

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- (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.

- (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.

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- (7) A person commits an offence if the person—

- (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
 - (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. 5
- (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. 10

Surcharges

8 Imposition of surcharges: failure to provide declaration in time

- (1) This section applies if—
- (a) a harbour authority requests the operator of a service to which this Act applies to provide the authority with an equivalence declaration in respect of the service for a relevant year, and 15
 - (b) the operator does not provide an equivalence declaration in the prescribed form and manner before the end of the prescribed period.
- (2) If the prescribed period expires before the beginning of the relevant year, the harbour authority must impose a charge on the operator of the service in respect of each occasion when a ship providing the service enters its harbour between— 20
- (a) the beginning of the relevant year, and
 - (b) whichever is the earlier of— 25
 - (i) the end of the relevant year, and
 - (ii) the time when the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner.
- (3) If the prescribed period expires during the relevant year, the harbour authority must— 30
- (a) impose a charge on the operator of the service in respect of each occasion when a ship providing the service entered its harbour between—
 - (i) the beginning of the relevant year, and 35
 - (ii) the end of the prescribed period, and
 - (b) impose a charge on the operator of the service in respect of each occasion when a ship providing the service enters its harbour between the expiry of the prescribed period and whichever is the earlier of—
 - (i) the end of the relevant year, and 40
 - (ii) the time when the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner.
- (4) If the prescribed period expires after the end of the relevant year, the harbour authority must impose a charge on the operator of the service in respect of each 45

occasion when a ship providing the service entered its harbour during the relevant year.

- (5) But charges imposed by a harbour authority under subsection (3)(a) or (4) must be refunded if –
- (a) at any time after the end of the prescribed period the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner, and
 - (b) the declaration is within section 4(4) or (5).
- (6) For the purposes of this section, in relation to an equivalence declaration which an operator of a service is required to provide –
- “prescribed period” means the period within which the operator is required to provide the declaration in accordance with regulations under section 3(5)(a);
 - “prescribed form and manner” means the form and manner in which the operator is required to provide the declaration in accordance with regulations under section 3(5)(b) and (c).

9 Imposition of surcharges: in-year declaration that is prospective only

- (1) This section applies if –
- (a) a harbour authority requests the operator of a service to which this Act applies to provide the authority with an equivalence declaration in respect of the service for a relevant year,
 - (b) the operator provides the declaration during the relevant year in accordance with regulations under section 3(5), and
 - (c) the declaration is within subsection (3) of section 4 (and not also within subsection (4) of that section).
- (2) The harbour authority must impose a charge on the operator of the service 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.

10 Imposition of surcharges: operating inconsistently with declaration

- (1) This section applies if –
- (a) the operator of a service to which this Act applies has provided a harbour authority with an equivalence declaration in respect of the service for a relevant year, and
 - (b) either –
 - (i) the operator notifies the authority that at a specified time after the declaration was provided the service was, or started to be, operated inconsistently with the declaration, or
 - (ii) the authority has reasonable grounds to believe that, at a time after the declaration was provided, the service was, or started to be, operated inconsistently with the declaration.
- (2) The harbour authority must impose a charge on the operator in respect of each occasion when a ship providing the service entered or enters the harbour between –
- (a) the time mentioned in subsection (1)(b)(i) or (ii), and
 - (b) the end of the relevant year.

- (3) But if after the time mentioned in subsection (1)(b)(i) or (ii) the operator provides the harbour authority with a fresh equivalence declaration in respect of the service for the relevant year, the authority must not impose a charge under this section in respect of an occasion when a ship providing the service enters the harbour after the fresh declaration is provided (unless this section applies again by reference to that or a later declaration). 5

11 Surcharges: general

- (1) The amount of a surcharge is to be determined by a tariff of surcharges specified by the harbour authority in accordance with regulations.
- (2) The tariff of surcharges specified by a harbour authority must be published by the authority in such manner as it thinks fit. 10
- (3) A duty to impose a surcharge is subject to any direction given by the Secretary of State under section 15(1)(a).
- (4) A harbour authority which fails to comply with a duty to impose a surcharge is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 15
- (5) Regulations may make provision as to—
- (a) how the imposition of a surcharge is to be notified to the operator;
 - (b) the period within which a surcharge must be paid;
 - (c) the manner in which a surcharge must be paid; 20
 - (d) notification of the imposition of a surcharge to the Secretary of State;
 - (e) publication of the fact that a surcharge has been imposed.
- (6) Regulations may make provision requiring a harbour authority that has imposed a surcharge to notify the Secretary of State if so much of the period within which the surcharge must be paid as is specified in the regulations has expired without the surcharge having been paid in accordance with regulations under subsection (5)(c). 25
- (7) 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 30
 - (b) shore-based welfare facilities for seafarers.
- (8) References in the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970 to ship, passenger and goods dues do not include a surcharge.
- (9) In this Act, “surcharge” means a charge under section 8, 9 or 10.

12 Objections to surcharges 35

- (1) An interested party may object to either of the following—
- (a) the tariff of surcharges specified by a harbour authority;
 - (b) 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. 40
- (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 – 5
- (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). 10
- (5) If any representations are made under subsection (4)(b)(ii), the Secretary of State must – 15
- (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. 20
- (7) 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 tariff –
 - (i) to approve the tariff, or
 - (ii) to direct the harbour authority to revise the tariff; 25
 - (b) 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. 30
- (8) The Secretary of State must –
- (a) communicate the decision to the harbour authority and the objector, and
 - (b) publish the decision online.
- (9) 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). 35
- (10) Subsections (4) to (8) 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. 40

13 Refusal of harbour access for failure to pay surcharge

- (1) A harbour authority must 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,
 - (b) the operator has not paid the surcharge in accordance with regulations under section 11(5)(c), and
 - (c) the period within which the surcharge must be paid has expired. 5
- (2) It does not matter for the purposes of subsection (1) whether an objection has been made to the surcharge under section 12.
- (3) Subsection (1) does not apply in relation to any surcharge imposed under subsection (3)(a) or (4) of section 8 which would, if paid, be required to be refunded under subsection (5) of that section. 10
- (4) But a harbour authority must 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. 15
- (5) The duty under subsection (1) is also subject to any direction given by the Secretary of State under section 15(1)(a).
- (6) A harbour authority which fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 20
- (7) Regulations may make provision as to how a harbour authority is to communicate refusal of access under this section.
- (8) Nothing in section 33 of the Harbours, Docks and Piers Clauses Act 1847 prevents refusal of access to a harbour under this section.

Supplementary 25

14 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.

15 Directions

- (1) The Secretary of State may give directions to any one or more harbour authorities requiring them – 30
- (a) to not do anything they would otherwise be under a duty to do by reason of this Act, or
 - (b) to comply with any of their duties under this Act in a particular way.
- (2) Directions under this section may be varied or revoked. 35
- (3) The Secretary of State must publish any directions under this section in such manner as the Secretary of State thinks fit.
- (4) A harbour authority which fails to comply with a direction given to it under this section or section 12(7) or (9) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 40

16 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 19.

*General***17 “Harbour” and “harbour authority”** 15

- (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
 - (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 regulations specify which of them is to be treated as the harbour authority in respect of the harbour for the purposes of this Act.

18 General interpretation

In this Act –

- “equivalence declaration” has the meaning given by 3(2);
- “false or misleading” means false or misleading in a way which is relevant to the operation of any provision of this Act; 30
- “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); 35
- “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; 40
- “relevant year” has the meaning given by section 3(6);
- “ship” has the meaning given by section 1(3);
- “surcharge” has the meaning given by section 11;

“UK work” has the meaning given by section 4(10);
“work” has the same meaning as in the National Minimum Wage Act 1998.

19 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland. 5
- (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;
 - (b) sections 1 and 2, 15 to 18 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. 10
- (4) Regulations under subsection (3) may –
 - (a) appoint different days for different purposes;
 - (b) contain transitional provision. 15
- (5) This Act may be cited as the Seafarers' Wages Act 2023.

Seafarers' Wages Bill [HL]

A

B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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

Brought from the Lords, 7 November 2022

*Ordered, by the House of Commons, to be
Printed, 17 January 2023*

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