

MERCHANT SHIPPING (HOMOSEXUAL CONDUCT) BILL

EXPLANATORY NOTES

What these notes do

- These Explanatory Notes relate to the Merchant Shipping (Homosexual Conduct) Bill as brought from the House of Commons on 27 March 2017(HL Bill 116).
- These Explanatory Notes have been provided by the Department for Transport, with the consent of Baroness Scott of Bybrook, the Member in Charge of the Bill, 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 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.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	2
Territorial extent and application	3
Commentary on provisions of Bill	3
Clause 1: Homosexual acts in the merchant navy: repeals	3
Commencement	4
Financial implications of the Bill	4
Parliamentary approval for financial costs or for charges imposed	4
Related documents	4
Annex A – Territorial extent and application in the United Kingdom	5

Overview of the Bill

- 1 This Bill relates to the repeal sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994 ('CJPOA') which provide for the right to dismiss a seafarer on a UK registered merchant navy vessel for an act of homosexuality. Whilst the sections are no longer of any legal effect due to other legislation (primarily, the Equality Act 2010 and regulations made under it), repealing them would both be symbolic and would prevent any misunderstanding as to their current effect.

Policy background

- 2 Even though it is of no effect, the policy implication of the sections is ambiguous, and may be seen as a statement that homosexual conduct, per se, is incompatible with employment on merchant vessels.
- 3 There is also a risk that a person investigating the employment rights of LGBT people in the Merchant Navy might come upon the sections, and (understandably, but incorrectly) consider that they mean that LGBT people are not welcome inside the Merchant Navy.
- 4 Finally, as the sections are obsolete, removing them would tidy up the statute book.
- 5 A similar approach to this Bill was taken by the Government in the Armed Forces Act 2016, which removed the parts of the sections which referred to the Armed Forces. During the passage of that Act, the relevant Minister made the following statement:

'[T]he Department for Transport has made it clear that it intends to deal with the merchant navy aspect [of the Criminal Justice and Public Order Act] as soon as possible'

(Mark Lancaster MP (PUS, MoD) Hansard, 11 Jan 2016: Column 600)

Legal background

- 6 Sections 146(4) and 147(3) CJPOA came into being as a result of the gradual development of LGBT rights within the United Kingdom.
- 7 Section 1 of the Sexual Offences Act 1967 ("the 1967 Act") decriminalised homosexual acts in private. Section 1(5) provided that this did not prevent a homosexual act from being an offence in military law. Section 2 maintained that a homosexual act on a merchant ship would also remain an offence.
- 8 The Criminal Justice and Public Order Act 1994 ("the 1994 Act") covered several topics, including young offenders, police powers, bail and squatters. The 1994 Act also dealt with some topics related to homosexuality, within Part XI (Sexual Offences). Of particular notice is section 145, which reduced the homosexual age of consent from 21 to 18 across the United Kingdom. The CJPOA also contained provisions in sections 146 and 147 to remove the remaining criminal liability which existed under the 1967 Act.
- 9 Sections 146(4) and 147(3) were added as non-government amendments during passage of the Bill. The proposer of the amendments was concerned that making homosexual conduct legal in both the Armed Forces and Merchant Navy might mean that homosexuals could not be dismissed for engaging in it, or that such conduct could not be used as the basis of a prosecution under military discipline.

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- 10 The provisions are saving provisions which aim to restrict the meaning of the rest of the CJPOA ('nothing (contained) in this section shall...'), and as such they do not have any effect on other measures. The wording of the sections means it is possible for dismissal for homosexual conduct to be prevented by other Acts and by government policy. This occurred in the Armed Forces in 2000 following the case of *Smith and Grady v. UK*, when government policy was changed to permit homosexuals to serve within the Armed Forces. In respect of the Merchant Navy, this occurred as a result of employment regulations made seven years after the passage of the CJPOA, in 2003. Any such discriminatory employment practices are now unlawful in Great Britain by virtue of regulation 4 of the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 (S.I. 2011/1771), and in Northern Ireland by regulation 6 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (SI.2003/497). The provisions in the CJPOA are therefore of no current legal effect.
- 11 Sections 146(4) and 147(3) of the 1994 Act have been progressively repealed over the years until their current state, where they only refer to the Merchant Navy. The parts of those sections relating to offences related to military discipline were repealed by the Armed Forces Act 2006, and all references to the Armed Forces were removed from the sections in the Armed Forces Act 2016. At that point, consideration was given to removing the references to the Merchant Navy as well, but advice was received that, because the Merchant Navy are not part of the Armed Forces, that would be out of scope of the Bill. Accordingly, section 146(4) of the 1994 Act now provides as follows:

'Nothing contained in this section shall prevent a homosexual act (with or without other acts or circumstances) from constituting a ground for dismissing a member of the crew of a United Kingdom merchant ship from his ship'
- 12 Section 147(3) made identical provision with respect to Northern Ireland.

Territorial extent and application

- 13 The Act extends as a whole to England, Wales, Scotland and Northern Ireland. By virtue of clause 2(2), each of the repeals have the same extent as the provisions to which they relate. Hence, the repeal of section 146(4) extends to England, Scotland and Wales, and the repeal of section 147(3) extends to Northern Ireland.
- 14 Employment and industrial relations, equal opportunities and the subject matter of the Merchant Shipping Act are all reserved in Scotland. There are no devolution issues arising from either the current settlement under the Government of Wales Act, or within the framework envisaged by the current draft of the Wales Bill.
- 15 Northern Ireland Executive have agreed that the subject matter of this Bill is reserved in Northern Ireland. The table in Annex A summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Homosexual acts in the merchant navy: repeals

- 16 In the Criminal Justice and Public Order Act 1994, sections 146(4) and 147(3) (homosexual acts as grounds for dismissal from the crew of merchant ships) will be removed. The right to dismiss on the grounds of homosexuality is actually no longer permissible due to more current legislation so removal of the clauses is primarily symbolic but it seeks also to remove any doubt in the Statute.

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Commencement

17 Clause 2 of the Bill (extent, commencement and short title) provides that the Act will come into force on the day on which it is passed.

Financial implications of the Bill

18 There are no financial implications.

Parliamentary approval for financial costs or for charges imposed

19 We do not expect the Bill to require a money resolution or a ways and means resolution.

Related documents

20 The following documents are relevant to the Bill and can be read at the stated locations:

- The Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011: <http://www.legislation.gov.uk/uksi/2011/1771/contents/made>
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003: <http://www.legislation.gov.uk/nisr/2003/497/contents/made>

Annex A – Territorial extent and application in the United Kingdom

The provisions of the Bill extend and apply to Great Britain and Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1 – Repeal of Criminal Justice and Public Order Act 1994, section 146(4)	Yes	Yes	Yes	No	No	No	N/A	No
Clause 1 – Repeal of Criminal Justice and Public Order Act 1994, section 147(3)	No	No	No	Yes	N/A	N/A	No	No

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