

Research Briefing

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Seafarers' Wages Bill [HL] 2022-23



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Summary

The Seafarers' Wages Bill, if passed, would ensure seafarers working on ships that use UK ports at least 120 times a year are paid a rate at least equivalent to the UK national minimum wage for their work in UK waters.

The Bill, which is 184 of the 2022-23 session, had its first reading in the House of Commons on 8 November 2022. Second reading is due to take place on 19 December 2022.

Background to the Bill

What is the national minimum wage?

The national minimum wage (NMW) was first introduced by the National Minimum Wage Act 1998.

Since the passage of the National Minimum Wage (Offshore Employment) (Amendment) Order 2020, the NMW applies to all seafarers on vessels on domestic UK routes. It applies whether the vessels were UK-registered or not and even if the seafarers are not ordinarily resident in the UK, but not to seafarers working on international routes unless their ship is registered in the UK and they are ordinarily resident in the UK.

Since 1 April 2022, the NMW for those aged 18 to 20 is £6.83 and for those aged 21 to 22 is £9.18. The [UK National Living Wage](#) (which is for those aged 23 and over) is £9.50.

For comparison, as of 1 July 2022, the [International Labour Organisation's recommended basic minimum wage for an "able seaman"](#) is \$US 648 (about £550) per calendar month. This is a non-binding international recommended minimum wage for seafarers under the Maritime Labour Convention.

This is based on seafarers working eight hours a day, or a 48-hour work week, meaning it is equivalent to an hourly rate of £2.66. International maritime law under the [UN Convention on the Law of the Sea](#) has made it difficult for the UK Government to legislate for a binding minimum wage for seafarers on vessels serving international routes to and from UK ports.

P&O ferries redundancies

On 17 March 2022 [P&O Ferries Ltd made 786 seafarers redundant](#), without prior notice or consultation. The company announced plans to move to a new

operating model using agency workers to crew its ships who would be paid less than the NMW.

In oral evidence to a select committee, [P&O CEO Peter Hebblethwaite said the average hourly rate for the agency workers under the new crewing model would be £5.50](#) (PDF). Later in the hearing he said that the lowest hourly rate would be £5.15. The background and employment law issues raised by this incident are explored more fully in the Library briefing [P&O Ferries: Employment law issues](#).

The Government's nine-point plan for seafarers

On 30 March 2022, then Secretary of State for Transport, Grant Shapps announced [nine measures the Government would take in response](#) to the P&O Ferries redundancies.

The eighth of these measures was legislation to grant British ports powers to refuse access to ferries that do not pay their crew at least an equivalent to the UK National Minimum Wage.

The background [briefing notes to the Queen's Speech 2022](#) contained reference to a Harbours (Seafarers' Remuneration) Bill. This was later [renamed](#) the Seafarers' Wages Bill.

On 10 May 2022, the same day as the Queen's Speech, the Government opened the consultation [Conditions for harbour access and seafarers' pay-rates: scope and compliance](#). Responses expressed concern about the need for ensuring consistency with international maritime law, and the role to be played by port authorities in the Bill.

What does the Bill aim to do?

The Bill seeks to ensure seafarers on ships using UK ports at least 120 times a year are paid a rate at least equivalent to the UK national minimum wage for work they do while in UK waters. This would apply regardless of the [ship's flag](#) or the seafarers' nationality.

Currently, seafarers working on international routes to or from UK ports are [not entitled to the national minimum wage](#) if they are not usually resident in the UK; do not work at least to some extent in the UK; or work on non UK-flagged ships.

If the Bill passed, it would mean that:

- Harbour authorities would have the power to request ship operators covered by the Bill to provide a declaration that their seafarers are paid at a rate at least equivalent to the NMW for their work in the UK or its territorial waters, if they did not already qualify for the NMW (Clause 3 of the Bill)

- Harbour authorities would be able to charge operators who failed to provide a declaration showing the equivalent rates (Clause 7)
- Harbour authorities could refuse access to the harbour if the operator failed to pay the surcharge (Clause 9)
- The Secretary of State for Transport could appoint investigators from the Maritime and Coastguard Agency (MCA) to verify operators are complying (Clause 6)
- The Secretary of State would have powers to direct harbour authorities on whether to impose a surcharge and how much it should be (Clause 11)

Commentary on the Bill

Representatives of the shipping and [ports industry](#) have welcomed the Bill's intention but expressed concerns about its impact. The UK Chamber of Shipping said [the Bill could potentially undermine existing international agreements](#).

The trade union [Nautilus welcomed the Bill](#) but warned that, as it relates to ships docking at a specific port, it could lead to operators 'port-hopping' to avoid regulation.

The National Union of Rail, Maritime and Transport Workers (RMT) [urged the Government to support amendments](#) tabled in the Lords by Labour peers to expand the scope of the Bill to also include roster patterns, fair pay and legal protection for seafarers (See section 5.3 of this paper, amendment 5).

Legal firm [Burness Paull published an article on the Bill](#) by one of its partners which expresses scepticism over whether the Bill will achieve its stated aims.

The Government has responded to several written questions on the issue of seafarers' wages since the P&O Ferries redundancies and the announcement of its intent to legislate. It has reiterated the Bill aims to ensure seafarers with close ties to the UK are paid at least an equivalent to the UK National Minimum Wage.

Passage of the Bill in the Lords

The Bill as brought from the House of Lords contains 15 clauses. At third reading, two amendments both tabled by Labour peers, were [defeated following a division](#).

The Delegated Powers and Regulatory Reform Committee (DPRRC) recommended that [two sub-sections of the Bill be changed](#), as they granted excessive powers to the Secretary of State. The [Government agreed with one](#)

of those recommendations and removed the original Clause 3(4)(a) from the Bill. This is the only amendment made to the Bill as presented to the Commons.

1 Introduction

The [Seafarers' Wages Bill \[HL\] 2022-23](#), Bill 184 of the 2022-23 session, had its First Reading in the House of Commons on 8 November 2022. It is listed for Second Reading on 19 December 2022.

The Bill was first introduced in the House of Lords where it had its First Reading on 6 July; Second Reading on 20 July; Committee Stage on 12 October; Report Stage on 26 October and Third Reading on 7 November 2022.¹

The Bill was subject to a report by the Delegated Powers and Regulatory Reform Committee on 5 October, to which the Government responded on 25 October 2022.

The Bill, together with its explanatory notes (which provide a clause-by-clause explanation of the Bill), impact assessment, delegated powers memorandum and an overview of its parliamentary progress, is available on the [Parliament Bill webpage](#).²

The Bill was introduced following a [Government consultation](#) which ran from 10 May to 7 June 2022, and the publication of the Government's [nine-point plan to protect seafarers](#) on 6 July 2022.³

The Bill does not amend any other Act of Parliament. It makes reference to the National Minimum Wage Act 1998, the Harbours Act 1964, the Harbours Act (Northern Ireland) 1970 and the Harbours, Docks and Piers Clauses Act 1847.

The Bill would extend to England, Wales, Scotland and Northern Ireland. The legislative consent motion process will not be engaged for Scotland, Wales or Northern Ireland.

Clauses 1, 2 and 11-15, and any provision conferring a power to make regulations would come into effect on the day the Bill becomes law. The remaining clauses are about what those regulations may entail.

¹ Seafarers' Wages Bill [HL] 2022-23 [Stages](#) [Accessed 14 November 2022]

² Seafarers' Wages Bill [HL] 2022-23 [Publications](#) [Accessed 14 November 2022]

³ Department for Transport, [Consultation outcome: Conditions for harbour access and seafarers' pay-rates: scope and compliance](#), 10 May 2022; Department for Transport, [Policy paper: Nine-point plan for seafarers – our commitments to protect seafarers](#) 6 July 2022

2 Background to the Bill

2.1 Seafarers and the UK minimum wage

The National Minimum Wage (NMW) was first introduced by the National Minimum Wage Act 1998. Section 40 of the Act states that anyone employed to work onboard a ship registered in the United Kingdom is to be

treated as an individual who under his contract ordinarily works in the United Kingdom unless—

(a) the employment is wholly outside the United Kingdom; or

(b) the person is not ordinarily resident in the United Kingdom;⁴

The applicability of NMW to those working offshore was further clarified by the National Minimum Wage (Offshore Employment) Order 1999. This extended the right to be paid NMW to all individuals working “in the territorial waters of the United Kingdom” or “in the United Kingdom sector of the continental shelf”, provided they were not employed “in connection with a ship which is in the course of navigation or a ship which is engaged in dredging or fishing.”⁵ The exclusion of ships in the course of navigation meant the effects of this order were largely limited to offshore workers such as those working on oil or gas rigs or wind farms; seafarers such as on passenger or cargo shipping routes remained excluded unless they were covered by the original section 40 definition of being on a UK registered vessel, being at least partly employed in the UK and being ordinarily resident in the UK.

Extension of NMW to seafarers 2019-2020

In January 2019 the Department for Transport published “Maritime 2050: Navigating the future”, which included Government plans to extend the NMW to all seafarers on vessels on domestic routes in UK territorial waters or on its continental shelf. As the document explained:

Applying the legislation to all seafarers working in these waters, regardless of their nationality and the flag of the vessel they are on, will allow UK seafarers to compete more fairly for domestic jobs, while increasing the protection for all seafarers in our waters. By limiting it to our domestic trade and excluding

⁴ [Section 40, National Minimum Wage Act 1998](#)

⁵ National Minimum Wage (Offshore Employment) Order 1999

vessels on international trade, it will also be compliant with international law on rights of innocent passage.⁶

In line with this intention, the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 was made, amending the original National Minimum Wage (Offshore Employment) Order 1999 by changing the broad exemption of a “ship which is in the course of navigation”, to a narrower exemption only for ships “exercising the right of innocent passage or the right of transit passage”, as defined by the United Nations Convention on the Law of the Sea (UNCLOS).⁷ “Passage” is defined by Article 18 of UNCLOS as navigation through a territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.⁸

As the explanatory memorandum to the 2020 Order explained, this definition of “innocent passage” could still include “vessels entering UK territorial waters as part of an international voyage” such as “ferry services operating between the UK and mainland Europe” but would not include domestic ferry routes such as those between Great Britain and Northern Ireland.⁹

This effect of the 2020 Order was therefore to extend the right to be paid the NMW to all seafarers on vessels serving domestic UK routes, whether the vessels were UK-registered or not and even if the seafarers are not ordinarily resident in the UK. However, the NMW still does not apply to seafarers working on international routes unless their ship is registered in the UK and they are ordinarily resident in the UK.

When the 2020 Order was passed in May 2020, the National Union of Rail, Maritime and Transport Workers (RMT) welcomed the legislation but noted it would not apply to routes to and from the UK to the European Union and warned that some operators, like P&O Ferries, may seek to take advantage of this, saying:

We welcome this but it is a small victory in the scheme of things...It will not however affect international routes from UK ports, for example from the UK to the European mainland, where operators have been paying foreign seafarers as little as £2 per hour for years on routes that are now in line for no-strings taxpayer bail outs.

⁶ Department for Transport, [Maritime 2050: Navigating the future](#) [PDF], January 2019, p148

⁷ [National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020, article 2](#)

⁸ United Nations Convention on the Law of the Sea, Article 18

⁹ [Explanatory Memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#), para 7.5

Some operators, like P&O even see Covid-19 as their chance to replace UK Ratings with cheaper crews from thousands of miles away on pay below the minimum wage.¹⁰

1 National Minimum Wage and National Living Wage rates

Since 1 April 2022, the UK National Living Wage (for those aged 23 and over) is £9.50. The National Minimum Wage for those aged 18-20 is £6.83 and those aged 21-22 is £9.18.¹¹

2.2

Wages for international seafarers

The Maritime Labour Convention, which came into force in 2013, set guidance as to the minimum basic rate of pay for all able seafarers operating on shipping worldwide. The rate is set every two years at a meeting of the Joint Maritime Commission – a body representing shipowners and seafarers established by the ILO.¹²

The recommended rates are not binding or enforceable but represent guidance as to what is considered acceptable practice.¹³ The International Transport Workers' Federation (ITF) advocates globally that no seafarer be paid below the International Labour Organisation (ILO) level.

2 Recommended minimum seafarer's wages

As of 1 July 2022, the ILO recommended a basic minimum wage for an “able seaman” as 648 US Dollars (about £550) per calendar month.¹⁴ This is based on working seafarers' hours of 8 hours a day, or a 48-hour work week, meaning it is equivalent to an hourly rate of £2.66. From 1 January 2023 this is set to rise to 658 US Dollars (about £560) per month, or around £2.69 an hour equivalent.¹⁵

¹⁰ RMT, “[RMT welcomes publication of legislation to extend seafarers minimum wage](#)”, 7 May 2020

¹¹ Gov.uk, [National Minimum Wage and National Living Wage rates](#), [accessed 15 November 2022]

¹² International Transport Workers' Federation, [Wages](#), [accessed 15 November 2022]

¹³ International Labour Organization, [Explanatory note to the regulations and code of the Maritime Labour Convention](#), accessed 11 July 2022.

¹⁴ International Labour Organization Sub-Committee on Wages of Seafarers of the Joint Maritime Commission, [Updating of the minimum monthly basic pay or wage figure for able seafarers: Maritime Labour Convention, 2006, as amended, guideline B2.2.4—Minimum monthly basic pay or wage for able seafarers](#) [PDF], May 2022, p6 [currency conversation rates as of 14 November 2022]

¹⁵ As above

Restrictions of international maritime law

The United Nations Convention on the Law of the Sea (UNCLOS), which is a key text of international maritime law, restricts the ability of signatory countries to pass laws restricting the “innocent passage” of vessels. The UK has ratified UNCLOS.¹⁶

Article 21 of UNCLOS lists issues over which coastal States may “adopt laws and regulations... relating to innocent passage through the territorial sea”, but this list does not include the wages of seafarers. Article 21(2) also states that “Such laws and regulations shall not apply to the... manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards”.¹⁷

The explanatory memorandum to the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 refers to these restrictions in international law when it explains why the Government did not feel able to extend the 2020 Order to seafarers on ships on international routes, saying:

Under Article 21 of UNCLOS, a coastal State may adopt laws, for various specified purposes, that apply to innocent passage. However, this does not include legislation imposing a minimum wage for workers on such vessels.¹⁸

The then Transport Secretary, Grant Shapps, made a statement on 30 March 2022 announcing intention to legislate to grant new powers to ports to refuse access to vessels not paying crew NMW. He also explained why international maritime law restricted the Government from simply amending the National Minimum Wage Act 1998 to extend NMW to all seafarers on vessels using British ports:

Although we had originally intended to come to the Chamber today to announce changes to the National Minimum Wage Act 1998, after seeking expert maritime legal advice it has become clear that that will not be possible. The issue is that maritime law is governed by international conventions that would too easily override changes to domestic laws.¹⁹

¹⁶ United Kingdom instrument of accession to [United Nations Convention on the Law of the Sea \[PDF\]](#) 25 July 1997

¹⁷ [United Nations Convention on the Law of the Sea \[PDF\]](#), Article 21

¹⁸ [Explanatory Memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#), para 7.4

¹⁹ [HC Deb 30 March 2022 c841](#)

2.3

P&O Ferries redundancies 2022

On 17 March 2022 P&O Ferries Ltd (P&O) made 786 seafarers redundant, without prior notice or consultation. The company announced plans to move to a new operating model using third-party agency workers to crew its ships.²⁰

The background and employment law issues raised by this incident are explored more fully in the Library briefing paper [P&O Ferries: Employment law issues](#).²¹ In particular [P&O accepted](#) they had failed to comply with duties to consult with employee representatives as required under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 whenever an employer proposed to dismiss as redundant 20 or more employees at a single establishment within 90 days of fewer.²²

Questions were also raised about whether P&O had complied with section 193A of the Trade Union and Labour Relations (Consolidation) Act 1992, requiring them to notify authorities of the countries where the ships were registered in advance of the redundancies.²³

There was some legal debate as to whether, even if section 193A had been breached, the legal penalties in section 194 would apply, owing to the way the law had been worded when amended by the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018.²⁴

The Insolvency Service informed the Government in a letter on 1 April 2022 that it was launching “both formal criminal and civil investigations into the circumstances surrounding the recent redundancies made by P&O Ferries”.²⁵ In an update letter on 19 August 2022, the Insolvency Service announced that “After a full and robust criminal investigation into the circumstances surrounding the employees who were made redundant by P&O Ferries, we have concluded that we will not commence criminal proceedings.” The civil investigation was announced to be “ongoing”.²⁶

²⁰ The Guardian [P&O Ferries sacks all 800 crew members across entire fleet](#) 17 March 2022

²¹ Commons Library Briefing Paper CBP-9529 [P&O Ferries: Employment law issues](#) 19 April 2022

²² Transport Committee & Business Energy and Industrial Strategy Committee, [Oral evidence: P&O Ferries, HC 1231 \[PDF\]](#), 24 March 2022, Q124

²³ Gov.uk, [Letter from Business Secretary Kwasi Kwarteng and Labour Markets Minister Paul Scully to CEO of P&O Ferries following the redundancy of staff](#), 18 March 2022

²⁴ Alan Bogg (@thebigbogg). (Twitter). 23 March 2022 [accessed 12 April 2022]. Available from: <https://twitter.com/thebigbogg/status/1506688972625489921>

²⁵ Gov.uk, [Letter from Insolvency Service to Business Secretary on their investigation into P&O Ferries](#), 1 April 2022

²⁶ The Insolvency Service, [P&O Ferries: update from the Insolvency Service \(19 August 2022\)](#), 19 August 2022

Wages for P&O agency crews

It was alleged by trade unions that agency workers hired to replace P&O crews were being paid well below the NMW, with one claim that some were being paid £1.81 an hour.²⁷

In oral evidence given at a joint evidence session conducted by the Transport Committee and the Business, Energy and Industrial Strategy (BEIS) Committees, P&O CEO Peter Hebblethwaite said the average hourly rate for the agency workers under the new crewing model would be £5.50. Later in the hearing he added that the lowest hourly rate would be £5.15.²⁸

He explained that on international routes where the UK NMW doesn't apply, P&O Ferries are paying above the International Transport Workers' Federation (ITF) minimum wages. He also added that where P&O were governed by the UK NMW, they were paying it:

On the international routes that are governed by ITF standards, we are paying above ITF minimum wages. On our domestic route, which I think was referred to earlier—Larne-Cairnryan, where we are governed by the national minimum wage—of course we are paying the national minimum wage.²⁹

In his letter to the Secretary of State for Transport on 29 March, the P&O CEO said the company did not oppose Government legislation to increase the minimum wage for seafarers:

We welcome the Government's commitment to increasing the minimum wage for all seafarers working in British waters. We have never sought to undermine the minimum wage regulations. Indeed, from the outset, P&O Ferries has called for a level playing field regarding salaries on British ferry routes.³⁰

Political reaction to P&O redundancies

At Prime Minister's Questions on 23 March 2022, then Prime Minister Boris Johnson said: "We condemn the callous behaviour of P&O" and added that "we will be taking steps to protect all mariners who are working in UK waters and ensure that they are paid the living wage."³¹

On 30 March 2022, then Secretary of State for Transport, Grant Shapps made a statement to the House of Commons in which he set out package of nine measures detailing the Government's actions in response to the P&O Ferries redundancies. The eighth of these measures was planned legislation to give

²⁷ "[New P&O crew on less than £2 an hour, union claims](#)", BBC News, 22 March 2022 [accessed 15 November 2022]

²⁸ Transport Committee & Business Energy and Industrial Strategy Committee, [Oral evidence: P&O Ferries, HC 1231 \[PDF\]](#), 24 March 2022, Q131 & Q145

²⁹ Transport Committee & Business Energy and Industrial Strategy Committee, [Oral evidence: P&O Ferries, HC 1231 \[PDF\]](#), 24 March 2022, Q131

³⁰ Letter from Peter Hebblethwaite to Secretary of State for Transport, 29 March 2022, via Twitter @POferries <https://twitter.com/POferries/status/1508719375234306048>

³¹ HC Deb 23 March 2022, c325

British ports new statutory powers “to refuse access to regular ferry services that do not pay their crew the national minimum wage”. He said:

We will achieve that through primary legislation to amend the Harbours Act 1964. It will mean that if companies such as P&O Ferries want to dock in ports such as Dover, Hull or Liverpool, they will have no choice but to comply. Crucially, that also means that P&O Ferries can derive no benefit from the action it has disgracefully taken. It has fired its workers to replace them with those who are paid below minimum wage but, as a result of this measure, that cynical attempt will fail.³²

He said the Government’s intention was to bring forward such legislation “as quickly as possible” subject to consultation.³³

Grant Shapps also listed the establishment of “minimum wage corridors” as another one of the nine measures, saying that he was in discussions with his counterparts in France, Denmark, the Netherlands, Ireland and Germany to discuss ways to ensure that seafarers on direct ferry routes between these countries and the UK were paid a minimum wage.

On 4 July 2022, in response to a written question from Labour MP Grahame Morris, Robert Courts, then Parliamentary Under Secretary of State in the Department for Transport, gave an update on this proposal, which stated that:

The Secretary of State has written to his counterparts in France, Belgium, Ireland, Spain, Denmark, Germany, the Netherlands and Norway to explore the development of bilateral minimum wage corridors between our respective nations.

Alongside these letters, the Secretary of State and/or officials have already had bilateral discussions with the governments of France, Belgium, Spain and Germany about seafarer protections and welfare.³⁴

2.4

Queen’s Speech 2022

The background briefing notes accompanying the Queen’s Speech 2022 included a Harbours (Seafarers’ Remuneration) Bill to “protect seafarers working aboard vessels visiting UK ports by ensuring the ports have powers ultimately to refuse access to ferry services that do not pay an equivalent to the national minimum wage to seafarers while in UK waters”. The background briefing notes explained the primary means by which this would be achieved, by:

³² [HC Deb 30 March 2022 c841-842](#)

³³ As above

³⁴ [PQ 27741 \[Shipping: Minimum Wage\], 28 June 2022](#)

Empowering ports (statutory harbour authorities) to surcharge ferry operators if they do not pay the equivalent of the National Minimum Wage and ultimately to suspend them from access to the port.³⁵

The briefing notes added that the main benefits of the Bill would be:

- Ensuring all ferry crews receive a fair wage whilst in UK waters when operating regularly to or from UK ports.
- Deterring other companies from repeating what P&O did to 786 seafarers, by closing legislative gaps used by some ferry companies operating regularly in and out of UK ports, to pay their seafarers less than national minimum wage.
- Safeguarding fair competition between vessels registered with the UK Ship Register or domestic operated vessels and those operating internationally under other Flags³⁶

This Harbours (Seafarers' Remuneration) Bill was later renamed the Seafarers' Wages Bill.³⁷

2.5 2022 consultation

On 10 May 2022, the same day as the Queen's Speech, the Government opened a consultation on [Conditions for harbour access and seafarers' pay-rates: scope and compliance](#).³⁸ The consultation sought feedback on proposed legislation ensuring "seafarers would be paid an equivalent, at least, to the national minimum wage when in UK waters."³⁹ The consultation specifically sought views on the:

- scope of the services to which the new legislation should apply
- compliance processes, including powers of enforcement⁴⁰

The consultation ran from 10 May to 7 June 2022 and received 49 responses.⁴¹ The primary theme to emerge from the responses was the importance of ensuring that new powers were compatible with international law and UNCLOS, with some respondents expressing a view that remuneration for

³⁵ Prime Minister's Office, [Queen's Speech 2022: background briefing notes](#), p71

³⁶ As above

³⁷ [HL Deb 20 July 2022 c1998](#)

³⁸ Department for Transport, [Consultation outcome: Conditions for harbour access and seafarers' pay-rates: scope and compliance](#), 10 May 2022

³⁹ Department for Transport, Consultation: [Conditions for harbour access and seafarers' pay-rates: scope and compliance](#)

⁴⁰ As above

⁴¹ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, p8

seafarers should only be considered at an international level to ensure consistency.⁴²

A more specific issue identified in the responses was around the way National Minimum Wage Equivalence (NMWe) was calculated, with views expressed that:

NMWe should be determined based on the ILO definition of an 8 hour day or 48 hour week, with some pointing out that seafarers often work significantly longer hours than a 48- hour week and provision should be made for overtime pay.⁴³

There was some opposition to proposals to “limit the applicability of NMWe stipulations to roll-on and rolloff (ro-ro) and hybrid roll-on, roll-off and passenger vessels (ro-pax)” on the basis that it should either apply more widely to frequent vessels or should depend more on the time or degree of presence of seafarers in UK territorial waters, rather than the type of service.⁴⁴

In terms of the compliance process, there were concerns about the role of Statutory Harbour Authorities (SHAs) in the process and whether they were equipped to take on an enforcement role, particularly if that might involve denying port access and how this might conflict with the “open port duty”.⁴⁵

Overall, the consultation found that “more respondents (24%) felt that applying NMWe requirements to ships that regularly use UK ports would have an overall negative impact on the UK’s shipping and maritime sector” than felt it would have a positive impact (16%).⁴⁶ Most respondents did not provide a response to most of the other impact assessment questions in the consultation.

The consultation outcome and impact assessment were published on 6 July, the same day as the Bill was introduced to the House of Lords. In response to the consultation, the Government agreed to “define services in scope as those visiting UK ports at least once every 72 hours, without any exemptions for specific vessel types.”⁴⁷ The Government also agreed that the role of SHAs in enforcement would be limited, as the “SHA will simply receive the

⁴² As above

⁴³ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, p10

⁴⁴ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, Para 4.2

⁴⁵ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, p15. The ‘open port duty’ means that any UK port must be open to anyone to load/unload goods or passengers, on payment of fees. This duty is set out in statute in [Section 33 of the Harbours, Docks and Piers Clauses Act 1847](#)

⁴⁶ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, Para 6.2

⁴⁷ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, p13

declaration, and any verification or investigation will be undertaken by the MCA [Maritime and Coastguard Agency].”⁴⁸

⁴⁸ Department for Transport, [Seafarers' Wages Bill consultation: government response](#), 6 July 2022, para 5.9

3 The Bill

3.1 Introductory definitions

Clause 1 sets out the shipping services to which the Bill applies. It would cover services “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” (Clause 1(1)). It would not apply to services for the purpose of leisure or recreation, or to services provided by a fishing vessel (Clause 1(2)). “Ship” would include any kind of vessel used in navigation, as well as hovercraft (Clause 1(3)).⁴⁹

Clause 2 defines ‘non-qualifying seafarers’. A non-qualifying seafarer would be someone who fulfils all the following conditions:

- they work on a ship providing a service to which the Bill applies
- their work on the ship is carried out in relation to the provision of the service
- they fail to qualify for the national minimum wage for that work merely because, for the purpose of the National Minimum Wage Act 1998, they do not work, or do not ordinarily work, in the UK.⁵⁰

3.2 National minimum wage equivalence declarations

Clauses 3 to 6 set out the nature of declarations that shipping operators must make to harbour authorities.

Clause 3(1) would enable a harbour authority to request the operator of a service covered by the bill to provide a NMW equivalence declaration when using the authority’s harbour. The declaration must say that they pay the seafarers working on their services at least a rate equivalent to the NMW for the time worked in the UK or its territorial waters. Under **Clause 3(3)**, an NMW equivalence (NMWe) declaration in respect of any year could only be requested by the harbour authority if ships providing the service will have

⁴⁹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 28

⁵⁰ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 29

used the harbour on at least 120 occasions in that year.⁵¹ The Explanatory Notes say that this equates to once every 72 hours on average, as the Bill is intended to apply to seafarers who work on ships that regularly use UK ports.⁵²

Clause 3(4) would empower the Secretary of State to make regulations about the form of the NMWe declarations, and the way declarations are to be provided.⁵³

Clause 3(5) would make it an offence for an operator to operate a service inconsistently with their declaration and to fail to inform the harbour authority of any inconsistency within four weeks. The four weeks would start from the later of:

- the start of the year-long period to which the declaration relates
- the time when the service starts to be operated inconsistently with the declaration.⁵⁴

Under **Clause 3(6)** someone summarily convicted of an offence under this clause would be liable to:

- a fine in England and Wales, or
- a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.⁵⁵

There is no maximum fine on summary conviction in England and Wales.⁵⁶ In Scotland and Northern Ireland, Level 5 on the standard scale for summary convictions is £5,000.⁵⁷

Clause 4 sets out the nature of a NMWe declaration. Under **Clause 4(1)** a declaration would have to declare that for the year-long period covered by the declaration either:

- there will be no non-qualifying seafarers working on ships providing the service
- non-qualifying seafarers working on ships providing the service will be paid for their 'UK work' at a rate equal to or above the national minimum wage equivalent.

⁵¹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 31

⁵² [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 2

⁵³ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 32

⁵⁴ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 33

⁵⁵ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 33

⁵⁶ [Section 85, Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)

⁵⁷ [Article 5, The Fines and Penalties \(Northern Ireland\) Order 1984; Section 225, Criminal Procedure \(Scotland\) Act 1995](#)

Clause 4(2) would provide that the NMWe is an hourly rate to be specified in regulations. **Clause 4(4)** would enable the Secretary of State to make regulations determining the hourly rate, what qualifies as UK work, and currency conversion.⁵⁸

Clause 4(5) provides that the Secretary of State would, when making regulations, ensure that the NMWe for non-qualifying seafarers is in line with the NMW.⁵⁹ **Clause 4(6)** defines 'UK work' as work which is carried out in the UK or its territorial waters.⁶⁰

The method for calculating the national minimum wage is set out in the National Minimum Wage Regulations 2015.⁶¹ In the delegated powers memorandum accompanying the Bill, the Government said that the Bill would not directly extend entitlement to the NMW to non-qualifying seafarers, and therefore the 2015 regulations would not directly apply for calculating the NMWe.⁶²

The Government has said it expects that the method for calculating the national minimum wage equivalent 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".⁶³ The Government has said that it anticipates updating the NMWe rate regularly, as is done for the annual revision of the national minimum wage rate itself.⁶⁴

Clause 5(1) would allow the Secretary of State by notice to require operators to provide information to ensure a service is being operated consistently with any NMWe declarations.⁶⁵ Under **Clause 5(5)**, if they fail to provide requested information, or provide false or misleading information, an offence would be committed. Under **Clause 5(6)**, someone summarily convicted of an offence under Clause 5(5) would be liable to:

- a fine in England and Wales, or
- a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.⁶⁶

The Bill's Explanatory Notes say that the information requested may include, but is not limited to, payslips, seafarer employment agreements, and payroll

⁵⁸ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 35

⁵⁹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 36

⁶⁰ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 34

⁶¹ [The National Minimum Wage Regulations 2015](#)

⁶² Department for Transport [Seafarers' Wages Bill: Delegated powers memorandum \[PDF\]](#) 11 July 2022, p5

⁶³ Department for Transport [Seafarers' Wages Bill: Delegated powers memorandum \[PDF\]](#) 11 July 2022, p5

⁶⁴ Department for Transport [Seafarers' Wages Bill: Delegated powers memorandum \[PDF\]](#) 11 July 2022, p5

⁶⁵ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 37

⁶⁶ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 38

information.⁶⁷ **Clause 5(3)** specifies however, that it would not require an operator to provide information which might breach the data protection laws of any country or territory.⁶⁸

Clauses 6(1) and 6(2) would empower an inspector appointed by the Secretary of State to board a ship in a harbour in the United Kingdom or enter any premises for the purposes of establishing whether a service is being operated consistently with a NMWe declaration, or of verifying information provided under clause 5.⁶⁹

The inspector would have powers to require people to answer questions and sign a declaration that their answers were true, if the inspector had reasonable cause to believe they had information relevant to the purposes of the inspection. The inspector would also have powers to inspect documents, including electronic documents.⁷⁰

Under **clause 6(7)**, it would be an offence to:

- intentionally obstruct an inspector
- fail without reasonable excuse to comply with an inspector's requirements
- prevent another person from complying with an inspector's requirements
- make false or misleading statements

Under **Clause 6(8)** someone summarily convicted of an offence under Clause 6(7) would be liable to a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.⁷¹

The Explanatory Notes state that Clauses 5 and 6 would allow the Maritime and Coastguard Agency (MCA) to play an enforcement role in checking the validity of declarations. This would be done through intelligence-based checks in the event of credible evidence suggesting a possibly false or misleading declaration, and random spot checks.⁷²

3.3

Surcharges

Clauses 7 to 9 deal with the imposition of surcharges and restriction of harbour access where operators have not provided a valid NMWe declaration. If an operator has not submitted a declaration when requested

⁶⁷ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 39

⁶⁸ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 37

⁶⁹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 40

⁷⁰ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 41

⁷¹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 42

⁷² [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 43

by a harbour authority to do so, or if it appears to the harbour authority that the operator has committed an offence under clause 3, then **clause 7** would enable the harbour authority to impose surcharges whenever the operator's ships enter the harbour.

Under **Clause 7(5)**, the amount of a surcharge would be determined by a tariff of surcharges specified by the harbour authority in accordance with regulations. The harbour authority would be required to publish its tariff of surcharges.⁷³

In the explanatory notes, the Government has **said** that harbour authorities would be given discretion to set the surcharge level. It argues that this discretion is appropriate because they already set harbour charges (which are not fixed by legislation) to harbour users, and harbour authorities "have a commercial interest in being proportionate in terms of how a surcharge would be fixed."⁷⁴

Clause 7(7) would also give the Secretary of State power to make regulations about procedural and administrative arrangements relating to surcharges. For example, how the imposition of a surcharge should be published and notified to the operator and to the secretary of state and how long the operator would have to pay it.⁷⁵ A harbour authority would be able to retain the surcharge paid to it and use it for any of its functions as a harbour authority, or for shore-based welfare facilities for seafarers.⁷⁶

Clause 8 would allow objections to be made to surcharges. Under **Clause 8(1)** an "interested party" would be able to object in writing to the Secretary of State to:

- a harbour authority's determination to impose surcharges
- the tariff of surcharges specified by a harbour authority
- the imposition of a surcharge or the amount imposed⁷⁷

Under **Clause 8(4)**, the Secretary of State would have to notify the harbour authority and make public the details of any objection. There would follow a period of at least six weeks for any representations to be made.⁷⁸

Under **Clause 8(8)** the Secretary of State would then have to consider the objection and any representations and decide whether to approve the harbour authority's determination, or to direct it to revoke the surcharge, increase or decrease the amount of a surcharge, or revise the tariff.⁷⁹ Under

⁷³ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 44-45

⁷⁴ Department for Transport [Seafarers' Wages Bill: Delegated powers memorandum \[PDF\]](#) 11 July 2022, pp 7-8.

⁷⁵ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 46

⁷⁶ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 47

⁷⁷ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 49

⁷⁸ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 50

⁷⁹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 53

Clause 8(10) the Secretary of State could direct a harbour authority to repay a surcharge.⁸⁰ Under **Clause 8(9)** the Secretary of State's decision would have to be communicated to the harbour authority and the operator and published online.⁸¹

Clause 11(7) would make it an offence if a harbour authority did not comply with a direction given to them under **Clause 8(8) or Clause 8(10)**. On summary conviction, this offence would lead to a fine not exceeding level 4 on the standard scale. This is currently £2500 across the UK.⁸²

Clause 9(1) would allow a harbour authority to refuse access to a ship providing a service within scope of the Bill if the operator of the service had not paid a surcharge. Under **Clause 9(2)** the harbour authority could refuse access even if an objection had been made to the surcharge. Under **Clause 9(3)** the exceptions to this rule would be:

- in cases of force majeure⁸³
- where there were overriding safety concerns
- where there was a need to reduce or minimise risk of pollution
- where there was a need to rectify deficiencies on the ship⁸⁴

Clause 9(4) would give the Secretary of State the power to make regulations about how a harbour authority should communicate refusal of access.⁸⁵

3.4 Issuing guidance, directions and regulations

Clauses 10 to 12 are about the issuing of guidance, directions and regulations by the Government.

Under **Clause 10**, any proceedings relating to offences under the Bill would be brought by the Secretary of State, in England and Wales and Northern Ireland. The Government has said that this would be done through the Maritime and Coastguard Agency (MCA).⁸⁶

Clause 11 would give the Secretary of State the power to issue guidance for harbour authorities on how to exercise their powers. This would include

⁸⁰ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 55

⁸¹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 54

⁸² [Section 122, Sentencing Act 2020; Article 5, The Fines and Penalties \(Northern Ireland\) Order 1984; Section 225, Criminal Procedure \(Scotland\) Act 1995](#)

⁸³ 'Force majeure' events are usually defined as certain acts, events or circumstances beyond the control of the parties, for example natural disasters or the outbreak of hostilities (See Thomson Reuters, [Practical Law: Glossary—Force majeure](#) [accessed 12 July 2022])

⁸⁴ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 59

⁸⁵ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 60

⁸⁶ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 62

guidance to supplement regulations under **clause 7**, regarding the imposition of surcharges, including the amount of a surcharge in a tariff.

Under **Clause 11(3)** the Secretary of State could issue directions to harbour authorities including:

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

Failure to comply with such directions would be an offence, liable on summary conviction to a fine not exceeding level 4 on the standard scale.

The aim of this subsection is to provide an incentive to harbour authorities to perform their role - ensuring operators payment of NMWe - objectively, and to provide the Secretary of State a safeguard mechanism if they do not.⁸⁷

Clause 12 contains provision about regulations under the Bill. Regulation-making powers in the Bill would be exercisable by the Secretary of State, and would be subject to the 'negative' procedure (apart from commencement regulations made under Clause 15).⁸⁸

3.5

Further definitions and commencement

Clause 13 defines 'harbour' and 'harbour authority' by reference to the Harbours Act 1964 (for England, Wales and Scotland) and the Harbours Act (Northern Ireland) 1970 (for Northern Ireland).⁸⁹ Where there is more than one harbour authority for a harbour, the Secretary of State may direct which one should be treated as the authority for that harbour for the purposes of the Bill.⁹⁰

Clause 14 defines other terms used in the Bill.

Clause 15 provides that the Bill would extend to England and Wales, Scotland and Northern Ireland. It also provides that the regulation-making powers and clauses 1, 2 and 11 to 14 would come into force on the day the Bill received royal assent. Other provisions would be brought into force by regulations.⁹¹

⁸⁷ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 65

⁸⁸ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 67; UK Parliament [Negative procedure](#) [Accessed 10 October 2022]

⁸⁹ [Harbours Act 1964; Harbours Act \(Northern Ireland\) 1970](#). It is possible for there to be more than one harbour authority for a harbour area. See Commons Library Briefing [CBP-9576 Ports and Shipping FAQs](#), especially 'Q2.5 What is a Competent Harbour Authority?'

⁹⁰ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 69-70

⁹¹ [Explanatory Notes to Seafarers' Wages Bill \[HL\] 2022-23 \[PDF\]](#), Para 72

4 Commentary

4.1 Comments from the shipping and ports industry

Representatives of the shipping and ports industry have welcomed the intention of the Bill but expressed concerns about its impact. In a press release, the UK Chamber of Shipping said the Bill could potentially undermine existing international agreements:

Given the global nature of shipping, the protection of these rights is often enshrined in international agreements and law. It is vital that as this bill passes through Parliament it avoids undermining or cutting across these established international agreements, which would cause confusion and complication.⁹²

When the Bill was first mentioned as part of the Queen's Speech, the British Ports Association was concerned that UK harbour authorities would have to regulate the wages of port-users - a role for which they are unsuited. Before the Bill was published, they issued a press release outlining their concerns:

The creation of new rules for ports to regulate ships in such a way is unprecedented. Enforcing the minimum wage is not an area where ports have a core competency. This should be a job for the Maritime & Coastguard Agency or HM Revenue & Customs. Ports facilitate the safe and efficient movement of ships, goods, passengers and maritime activities, safely and efficiently, they are not regulators.

It remains unclear whether the Bill will achieve the Government's aims of improving long-standing issues for seafarers. Our initial assessment is that it might not be compatible with the UK's obligations under international treaties or the current principles which governs our independent ports sector.⁹³

Commentary from trade unions

The trade union Nautilus welcomed the Bill but warned that, as the Bill relates to ships docking at a specific port, it could lead to operators 'port-hopping' to avoid regulation. It argued the Bill needed amending:

The Bill as presented appears to relate to vessels docking at a specific port. This could lead to ferry operators 'port hopping' to avoid having to pay

⁹² UK Chamber of Shipping, Press Release [Seafarers' Wages Bill](#), 6 July 2022

⁹³ British Ports Association, Press Release [BPA Reacts to New Harbours \(Seafarers' Remuneration\) Bill](#), 10 May 2022

seafarers the minimum wage. As expected, the Bill also means port authorities would be responsible for ensuring operators pay their seafarers the minimum wage. Nautilus has been clear that port authorities are not the appropriate enforcement body, not least as some ferry operators also own and operate ports.

Despite good intentions from government, the legislation in its current form would not end exploitation of seafarers in UK waters. The Bill will continue its passage through Parliament, where Nautilus will be working with MPs/Lords across all parties to ensure that much-needed amendments are made.⁹⁴

The RMT urged the Government to support amendments tabled in the Lords by Labour peers (see section 5.3 of this paper, amendment 5) to expand the scope of the Bill from wage protection to also include roster patterns, fair pay and legal protection for seafarers. In a press release, it said:

Report Stage in the Lords on 26 October is a chance to amend the legislation to cover more conditions of employment than basic pay, and amendments have been tabled by Labour Peers to achieve this.

Mick Lynch, RMT General Secretary said: “P&O Ferries unlawful assault on our members’ jobs was rightly condemned across the political spectrum. But no meaningful punishment has been meted out to P&O Ferries, or their directors, so far.

“If this Bill is going to do anything to restore jobs, skills and collectively bargained standards for our seafarers then the Government has to agree to amendments that take it beyond national minimum wage complexities and onto certainties for crew and decent employers over roster patterns, fair pay and legal protection on international routes from England, Scotland and Wales. We urge this Government to support the Labour amendments to the Bill and fightback to protect our seafarers through levelling up the playing field to recover jobs at the likes of P&O Ferries.”⁹⁵

Legal commentary

The Law Society of Scotland published a briefing about the Bill ahead of second reading in the House of Lords in July and an updated [Briefing for Second Reading in the House of Commons](#) [PDF] in November 2022.^{96 97} This briefing includes a clause by clause explanation of the Bill and a number of detailed recommendations on individual clauses, including:

- Suggesting the definition of “ship” or “vessel” in the Bill be aligned with that used in section 313 of the Merchant Shipping Act 1995.

⁹⁴ Nautilus, Press Release [First reading of Seafarers' Wages Bill](#), 7 September 2022

⁹⁵ RMT, Press Release [RMT Call to Government on Seafarers Wages Bill](#), 26 October 2022

⁹⁶ Law Society of Scotland, Seafarers’ Wages Bill, briefing for Second Reading in the House of Lords, July 2022

⁹⁷ Law Society of Scotland, Seafarers’ Wages Bill, [briefing for Second Reading in the House of Commons](#), November 2022

- Suggesting Clause 2 cross-reference section 313 of the Merchant Shipping Act 1995 in its definition of “seaman”.
- Expressing concern over uncertainty in how multiple SHAs will coordinate in using their powers under Clause 3
- Suggesting any regulations made under Clause 4 setting out the nature of the NMWe take into account relevant MLO Regulations and the ILO minimum monthly wage for seafarers
- Suggesting a requirement for the Secretary of State to “consult with relevant persons before the issuing of guidance or directions” under Clause 11 would be appropriate
- Recommending that regulations made under clauses 3, 4, 7 and 9 be subject to the affirmative resolution “to enhance the scrutiny of the regulations by Parliament”⁹⁸

Legal firm Burness Paull also published an article on the Bill by one of its partners and a senior associate, [An update on seafarer welfare: does the Seafarers' Wages Bill deliver what was publicly promised?](#), following the Bill's introduction in the House of Lords. The authors noted the aims of the Bill to ensure seamen are paid a NMWe, but stated that “it seems as though the NMWe may well be less than the national minimum wage rates that apply to other categories of workers who are working in the UK.”⁹⁹

The authors also noted “question marks over whether the Bill will achieve its stated objectives” due to the way in which enforcement was to be dependent on harbour authorities, stating that “a breach of NMWe requirements may only serve to enrich harbour authorities rather than underpaid seafarers” and that:

If enacted in its current form, the Bill would place a heavy onus on harbour authorities to enforce compliance, the appropriateness of which was a matter of concern for respondents to the public consultation.¹⁰⁰

The article concluded by noting the difficulties of legislating in this area, saying:

The UK government's freedom to legislate in this area is restricted by a myriad of complex international legal obligations, but there may well be a feeling that the Bill does not deliver what was publicly promised.¹⁰¹

⁹⁸ As above

⁹⁹ Sam Jones and Andrew Knight, [An update on seafarer welfare: does the Seafarers' Wages Bill deliver what was publicly promised?](#), Burness Paull, 27 July 2022

¹⁰⁰ As above

¹⁰¹ As above

Political commentary

The Government has responded to several written questions on the issue of seafarers' wages since the P&O Ferries redundancies and the announcement of its intent to bring forward this legislation.

On 14 November, Transport Minister Richard Holden responded to a written question from Labour MP Mike Kane asking the Secretary of State for Transport “what recent steps his Department has taken to implement the Nine-point plan for seafarers, published on 6 July 2022.”

Richard Holden referenced the current Bill, saying:

Delivery of the nine-point plan continues at pace. A key aspect of this has been the development of the Seafarers' Wages Bill, which progressed to Third Reading in the House of Lords on 07 November 2022. The Bill will now progress into the House of Commons, marking a major step towards ensuring that seafarers with close ties to the UK are paid at a rate at least equivalent to the UK National Minimum Wage.

We are continuing with delivery of the wider nine-point plan, including engagement with our near European neighbours to explore the creation of minimum wage equivalent corridors, as well as working through international organisations to create a step change in seafarer welfare.¹⁰²

For political commentary on the Bill as part of the Lords stages, see section 5 of this briefing below.

¹⁰² PQ 80717, [on Shipping: Conditions of Employment], 7 November 2022

5 Consideration in the House of Lords

5.1 Second reading

The Bill had its second reading in the House of Lords on 20 July 2022. The House of Lord Library published a briefing paper beforehand.¹⁰³

Speaking for the Government was Baroness Vere, Parliamentary Under-Secretary of State at the Department for Transport. She said the Bill was being presented in the wake of P&O Ferries' decision to sack almost 800 of its workers and replace them with less costly workers. The Bill meant "changing the law so that seafarers with close ties to the UK are paid at least an equivalent to the UK national minimum wage while they are in UK waters."¹⁰⁴

The Bill received broad cross-party support, although some concerns were raised. Baroness Bakewell (Liberal Democrat) noted the fines for operators not providing a declaration must not exceed level 5 in Scotland and Northern Ireland, meaning a maximum fine of £5,000.

The Baroness said that this is too low a fine and would be unlikely "to deter an owner operating a profitable route carrying thousands of passengers."¹⁰⁵ She also said that allowing harbour authorities to set their own surcharges could mean operators simply choose harbours with lower surcharges, and a better solution would be for the Secretary of State to set one standard surcharge.¹⁰⁶

Lord Mountevans (Cross Bench) expressed concern the Bill would "duplicate and contradict the obligations for seafarers set out in long-established international conventions". This is because it might go against the primacy of flag states and hence "could attract international condemnation from the IMO and other flag states", and damage the UK's international reputation.¹⁰⁷

He also expressed concern that harbour authorities may be unhappy with the new regulatory burdens being placed on them – a point echoed by other Peers in the debate.¹⁰⁸ Baroness Scott of Needham Market (Liberal Democrat) also asked if the MCA had adequate resources to take on the extra responsibilities the Bill implied for them.¹⁰⁹

¹⁰³ House of Lord Library Briefing Paper [Seafarers' Wages Bill \[HL\]: HL Bill 38 of 2022-23](#) 14 July 2022

¹⁰⁴ [HL Deb 20 July 2022 c1975](#)

¹⁰⁵ [HL Deb 20 July 2022 c1980](#)

¹⁰⁶ [HL Deb 20 July 2022 c1980](#)

¹⁰⁷ [HL Deb 20 July 2022 c1988](#)

¹⁰⁸ [HL Deb 20 July 2022 c1988](#)

¹⁰⁹ [HL Deb 20 July 2022 c1993](#)

Lord Tunncliffe (Labour) said that as Clause 3 states the Bill would only apply to ships that enter a harbour at least 120 times a year, operators could simply tweak their timetables to escape its consequences.¹¹⁰

Responding for the Government, Baroness Vere said she was satisfied the Bill did not interfere with the UK's international treaty obligations¹¹¹ and that the Government was working with other countries on multilateral issues of seafarer pay such as bilateral 'minimum wage corridors', outside of the Bill.¹¹²

Regarding the potential burdens on ports, she said that harbour authorities "have a transactional relationship with visiting vessels already, so [The Bill] is just one more cog in that particular transactional relationship."¹¹³

Baroness Vere also argued that enforcement costs incurred to the MCA due to the Bill would be minimal, around £359,000 over 10 years.¹¹⁴ Responding to the potential problems created by harbour authorities setting their own surcharges, Baroness Vere said that the Government could intervene:

If a port for whatever reason had a ship approach and thought, "That's a friendly ship; we're not going to charge it a surcharge", the Secretary of State could direct it to charge the surcharge. That gets round the issue where you might have a port and a ferry service operated by the same operator. The Secretary of State's beady eye will be there to make sure that it does as it should.¹¹⁵

The motion was agreed to and the Bill was committed to a Grand Committee.

5.2 Committee Stage

Committee stage in the House of Lords was held on 12 October 2022, in Grand Committee. No amendments were made, but Peers discussed several amendments on the themes raised at second reading. In total, 39 amendments were to be moved at committee, but all were either withdrawn or not moved.¹¹⁶

There were four groups of amendments discussed during committee stage, on the following themes:

- The territorial scope of the Bill and the application of international law

¹¹⁰ [HL Deb 20 July 2022 c1996](#)

¹¹¹ [HL Deb 20 July 2022 c1998](#)

¹¹² [HL Deb 20 July 2022 c1998](#)

¹¹³ [HL Deb 20 July 2022 c1998](#)

¹¹⁴ [HL Deb 20 July 2022 c2000](#)

¹¹⁵ [HL Deb 20 July 2022 c2000](#)

¹¹⁶ Seafarers' Wages Bill [HL] [Marshalled List of Amendments to be Moved in Grand Committee \[PDF\]](#) 10 October 2022

- The scope of the Bill in terms of the services and ships to which it applies
- The relationship of this Bill to the domestic national minimum wage
- Incentives, enforcement and compliance¹¹⁷

The Bill was reported from committee without amendment.

5.3 Report stage and third reading

The Bill had its report stage debate on 26 October 2022. Ten amendments were tabled, two of which went to a division but were defeated. One Government amendment was tabled and agreed.¹¹⁸

Amendment 2: to widen the scope of the Bill

Amendment 2 would have amended Clause 3 of the Bill to bring more services within the scope of the Bill, by reducing the number of visits by a ferry service to one particular port needed to qualify, from 120 down to 52.¹¹⁹

The amendment was tabled by Lord Berkeley (Labour), and was defeated at a division, by 190 votes to 171.¹²⁰

Amendment 5: to require a 90-day post-implementation report

Amendment 5 was tabled by Lord Tunnicliffe (Labour), Lord Hendy (Labour) and Baroness Scott (Liberal Democrat). It would have inserted a new clause into the Bill, requiring the Secretary of State to publish a report monitoring of the effects of the Bill, within 90 days of it becoming law.

This 90-day report would include:

- an assessment of the Bill's effect on seafarers' roster patterns, pensions, and wages;
- a statement on whether any further legislation would be introduced based on this assessment;
- a strategy for engaging relevant trade unions on the implementation of the Bill;

¹¹⁷ [HL Deb 12 October 2022 c88GC](#)

¹¹⁸ Seafarers' Wages Bill [HL] [Marshallled List of Amendments to be Moved on Report \[PDF\]](#) 24 October 2022

¹¹⁹ Seafarers' Wages Bill [HL] [Marshallled List of Amendments to be Moved on Report \[PDF\]](#) 24 October 2022, Amendment 3

¹²⁰ [HL Deb 26 October 2022 c1509-1510](#)

- a strategy for monitoring the establishment of bilateral minimum wage corridor agreements;
- a strategy for assessing the Bill's interaction with international agreements, and any litigation that may have arisen due to the Bill.¹²¹

Speaking for the Government, Baroness Vere said that 90 days was too soon and nothing substantial would have changed by then. She added that assessing the impact of the Bill on rostering would be very difficult to do, because there are many different impacts on rostering, and she did not wish to make such a commitment at this stage.¹²²

She said that trade unions would be engaged anyway, so formalising that engagement in the Bill text was unnecessary. She said that bilateral minimum wage corridor agreements were a separate issue to the Bill, and that she was satisfied that the Bill did not conflict with international law. She also said that, if passed, there would be a five-year post-implementation review of the Bill anyway, as noted in the Bill's impact assessment.¹²³

Amendment 5 was defeated at a division, by 179 votes to 161.¹²⁴

Amendment 3: to remove a power to issue regulations

Amendment 3 was a Government amendment to remove subsection 3(4)(a) from the Bill. It was tabled following a recommendation by the Delegated Powers and Regulatory Reform Committee (DPRRC). Subsection 3(4)(a) of the Bill as presented to the Lords, would have given the Secretary of State power to issue regulations under the 'made negative' procedure.

Speaking for the Government, Baroness Vere said it conceded that this subsection gave the Government powers without adequate parliamentary oversight. However, the Government had determined the Bill could function without it anyway, so amendment 3 would remove this subsection completely:

I agree that the power as drafted could have been exercised in a way that had broad effect to amend the application of the Bill, with limited parliamentary scrutiny. That had not been the intention of the clause when it was included, but, after some consideration, the Government are satisfied that the removal of this power would not have any impact on the operability or policy intention of the Bill.¹²⁵

Amendment 3 was agreed without division.

¹²¹ Seafarers' Wages Bill [HL] [Marshalled List of Amendments to be Moved on Report \[PDF\]](#) 24 October 2022, Amendment 5

¹²² [HL Deb 26 October 2022 c1521-1522](#)

¹²³ [HL Deb 26 October 2022 c1521-1522](#); DfT Consultation outcome [Conditions for harbour access and seafarers' pay-rates: scope and compliance](#) Seafarers' wages bill - final stage impact assessment 6 July 2022

¹²⁴ [HL Deb 26 October 2022 c1523-1524](#)

¹²⁵ [HL Deb 26 October 2022 c1511](#)

Third reading was held on 7 November 2022. No amendments were put forward. The Bill passed and was sent to the Commons.¹²⁶

5.4

Delegated Powers and Regulatory Reform Committee Report

Prior to its Committee stage, the Delegated Powers and Regulatory Reform Committee (DPRRC) published a report on the Bill on 5 October 2022. The report highlighted two instances where the Committee considered that the Bill inappropriately delegated legislative power.¹²⁷

The first of these was subsection 3(4)(a) of the Bill, which would have given the Secretary of State the power to issue regulations – under the made negative procedure¹²⁸ – to restrict the circumstances in which a harbour authority could exercise its power to request a NMWe declaration from operators.

The DPRRC considered this power was “open-ended” and was more than a “procedural matter”. It therefore merited scrutiny under the more rigorous ‘affirmative’ procedure rather than the ‘made negative’ procedure as the Bill intended.¹²⁹

In its response to the DPRRC, the Government concluded that the clause was unnecessary anyway and that “removal of this power would not have any impact on the operability or policy intention of the Bill, but would ensure that there is no potential for the application of the Bill to be modified without proper parliamentary scrutiny.”¹³⁰

Secondly, the DPRRC also raised concerns about clause 11(2). This would give the Government the ability to direct Harbour Authorities to:

- exercise any of their powers under the Bill;
- not to exercise any of their powers under the Bill;
- or to exercise any of their powers under the Bill in a particular way.

Again, the DPRRC considered this clause to be a “completely open-ended power to, in effect, modify the entire Bill by directions subject to no form of

¹²⁶ [HL Deb 7 November 2022](#)

¹²⁷ Delegated Powers and Regulatory Reform Committee [HL Paper 65 10th Report of Session 2022–23 Seafarers' Wages Bill \[HL\] \[PDF\]](#) 5 October 2022

¹²⁸ UK Parliament [Negative Procedure](#) [Accessed 14 November 2022]

¹²⁹ Delegated Powers and Regulatory Reform Committee [HL Paper 65 10th Report of Session 2022–23 Seafarers' Wages Bill \[HL\] \[PDF\]](#) 5 October 2022, Para 9-12; UK Parliament [Negative Procedure](#) [Accessed 14 November 2022], UK Parliament [Affirmative Procedure](#) [Access 14 November 2022]

¹³⁰ Delegated Powers and Regulatory Reform Committee [HL Paper 65 10th Report of Session 2022–23 Seafarers' Wages Bill \[HL\]: Government Response \[PDF\]](#) 25 October 2022, Page 2

parliamentary scrutiny”, and requested that the Government remove the clause.¹³¹

However, the Government said it envisaged that any directions would only be issued to specific harbour authorities if and when necessary, rather than to all of them, and that moreover, this power was necessary to ensure compliance with the Bill. The Government therefore resisted removing this subsection.¹³²

¹³¹ Delegated Powers and Regulatory Reform Committee [HL Paper 65 10th Report of Session 2022-23 Seafarers' Wages Bill \[HL\] \[PDF\]](#) 5 October 2022, Para 22

¹³² Delegated Powers and Regulatory Reform Committee [HL Paper 65 10th Report of Session 2022-23 Seafarers' Wages Bill \[HL\]: Government Response \[PDF\]](#) 25 October 2022, Page 3

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