



## DEBATE PACK

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# Merchant Shipping (Homosexual Conduct) Bill 2016-17

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## Summary

This briefing has been prepared ahead of Report stage debate on the *Merchant Shipping (Homosexual Conduct) Bill 2016-17*, scheduled to occur on 24 February 2017. The Bill is a Private Members' Bill (Ballot Bill), sponsored by John Glen MP. The Bill completed its Committee stage on 8 February 2017, having received its Second Reading on 20 January 2017.

The Bill would repeal aspects of the *Criminal Justice and Public Order Act 1994* which suggest it would be lawful to dismiss a seafarer for a homosexual act. That law is in fact of no effect, as such a dismissal would fall foul of equality legislation. The Bill is therefore primarily of symbolic value.

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# 1. The Bill

The *Merchant Shipping (Homosexual Conduct) Bill 2016-17* was introduced to the House of Commons on 29 June 2016.<sup>1</sup> It received its Second Reading on 20 January 2017<sup>2</sup> and completed its Committee stage on 8 February 2017.<sup>3</sup>

The Bill and related documents are available on the Parliament [website](#), on which the Bill's progress can be followed. The text of the Bill is available [here](#).

While the Bill is a Private Members' Bill, it has Government support. The Department for Transport has prepared Explanatory Notes to the Bill, available [here](#).

# 2. Background

The Bill would repeal aspects of sections 146 and 147 of the *Criminal Justice and Public Order Act 1994* which suggest it would be lawful to dismiss a seafarer for a homosexual act. Those sections repealed in England, Wales & Scotland, and revoked in Northern Ireland, laws criminalising homosexual acts in the armed forces and aboard merchant ships. However, section 146(4) and 147(3) maintained that homosexual acts could provide grounds for discharging a member of Her Majesty's armed forces, or dismissing a member of the crew of a UK merchant ship.

[Section 14\(3\)](#) of the *Armed Forces Act 2016* repealed the parts of sections 146-147 relating to the armed forces but left in place the aspects concerning merchant ships. As such, section 146(4) currently provides:

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.

Section 147 makes the same provision for the law in Northern Ireland.

While the 1994 Act does not prevent a homosexual act from constituting a ground for dismissal, it would not provide any protection to an employer that chose to rely on it. Dismissing a member of crew of a merchant ship because of a homosexual act, specifically because the act was homosexual,<sup>4</sup> would constitute sexual orientation discrimination, contrary to Part 5 of the *Equality Act 2010*, as extended to work on ships by the [Equality Act 2010 \(Work on Ships and Hovercraft\) Regulations 2011 \(SI 2011/1771\)](#). The [Explanatory Memorandum](#) to the Regulations summarise their effect:

The Regulations apply Part 5 of the Act to:

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<sup>1</sup> [HC Deb 29 June 2016 c344](#)

<sup>2</sup> [HC Deb 20 January 2017 cc1180-1241](#)

<sup>3</sup> [PBC Deb 8 February 2017 cc1-6](#)

<sup>4</sup> As distinct from dismissal for participating in a sexual act irrespective of sexual orientation

- all seafarers, irrespective of nationality, who work onboard a UK registered ship which operates wholly or partly in GB or adjacent waters; and
- EEA/designated state seafarers where the legal relationship of their employment is located in (or closely linked to) GB, working onboard an EEA registered ship/hovercraft operating wholly or partly in GB or adjacent waters (except in relation to the protected characteristic of marriage and civil partnership); and
- EEA/designated state seafarers where the legal relationship of their employment is located in (or closely linked to) GB, working onboard a UK registered ship/hovercraft operating wholly outside of GB and/or adjacent waters.<sup>5</sup>

The Regulations apply in England, Wales and Scotland. In Northern Ireland, sexual orientation discrimination in employment is prohibited by regulation 6 of the *Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (SI 2003/497)*.

## Armed Forces Act 2016

As noted above, section 14(3) of the *Armed Forces Act 2016* repealed the parts of sections 146-147 relating to the armed forces. Section 14(3) came about following a Government amendment to the Armed Forces Bill moved during the Bill's Report stage.<sup>6</sup> It was thought during the early stages of the Bill's consideration that the Bill could not repeal the relevant parts of sections 146-147 as regards the armed forces, because those parts were bound up with the merchant navy, a subject outside the Bill's scope. During debate on Report the Government settled on decoupling the two issues, dealing with the armed forces aspects of sections 146-147 with the Bill, and the merchant navy aspects later, with appropriate legislation:

### Mark Lancaster

I am delighted to be speaking to this new clause today. It reflects the Government's commitment to the fair and equal treatment of lesbian, gay, bisexual and transgender armed forces personnel. It repeals two provisions regarding homosexuality in the armed forces that are inconsistent with the Department's current policies and the Government's equality and discrimination policies more generally.

### John Howell (Henley) (Con)

During the evidence session for the Select Committee, on which I served, I asked Mr Humphrey Morrison, from central legal services, whether this could be done. The answer I was given was that because it was tied up with the merchant navy, it could not be done. What has changed to allow this to go forward?

### Mark Lancaster

We have simply decoupled the two issues. We will be dealing with this matter in this Bill and the Department for Transport has made it clear that it intends to deal with the merchant navy aspect as

<sup>5</sup> [EXPLANATORY MEMORANDUM TO THE EQUALITY ACT 2010 \(WORK ON SHIPS AND HOVERCRAFT\) REGULATIONS 2011 2011 No. 1771, para 7.6](#)

<sup>6</sup> [HC Deb 11 January 2016 c600](#)

soon as possible. I am delighted to say that we are therefore moving ahead quickly, as we said we would.

This new clause would amend sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994, which currently contain wording indicating that a homosexual act can constitute grounds for discharging a member of the armed forces. New clause 1 removes this wording, while amendments 1 to 5 make a number of small technical changes to implement this clause. When sections 146 and 147 were enacted, it was Government policy that homosexuality was incompatible with service in the armed forces and, accordingly, members of the armed forces who engaged in homosexual activity were administratively discharged. That policy was rightly abandoned in January 2000, following a judgment of the European Court of Human Rights.<sup>7</sup>

For Labour, Kevan Jones supported the Government's approach:

I accepted during earlier stages of the Bill that the measure should apply also to the merchant navy, and I look forward to the Government introducing legislation to mirror this provisions for the merchant navy.<sup>8</sup>

The SNP's defence spokesperson made similar comments:

The SNP welcomes the new clause and the action from the Government, which is a step forward for better LGBT rights among our armed forces personnel. I am very pleased that the Minister has felt able, as he put it, to uncouple this from other legislation which was previously thought to hamper such progress. I echo the words of the hon. Member for North Durham (Mr Jones) in looking forward to the Government moving similar provisions forward in relation to the merchant navy.

It is scarcely credible that we are discussing this in 2016. The existing provision is discriminatory and it is offensive that it exists. Notwithstanding the fact that it has not been used for a number of years, we welcome the fact that the Government are finally removing the provision, as they should, because it has clearly infringed the rights of LGBT people over a number of years.<sup>9</sup>

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<sup>7</sup> Ibid., cc600-601

<sup>8</sup> Ibid., c603

<sup>9</sup> Ibid., c604

### 3. Second Reading

The Bill received its Second Reading, without division, on 20 January 2017, attracting unanimous support from all Members who spoke in the debate. John Glen, the Bill's sponsor, opened the debate noting:

When it comes to employment, in the merchant navy or anywhere else, what matters is a person's ability to do the job—not their gender, age, ethnicity, religion or sexuality. Hon. Members across the House share that commitment. Many will be surprised—astonished, even—to learn that this anomaly still remains on the statute book. There is no place in our society today for employment discrimination on the basis of sexual orientation, through which one provision applies to heterosexual individuals and another to homosexual individuals. The Bill repeals the now defunct provision that authorised the dismissal of a merchant seaman on the grounds of homosexual conduct. It is the last such provision penalising homosexual activity that remains on our statute book, and it should be removed.<sup>10</sup>

Throughout the debate Members highlighted the importance of the Bill's symbolism; that, while the Bill is in form a tidying of the statute book, its primary function is to signal a rejection of attitudes held to be inconsistent with contemporary values.

In responding to the debate, the Minister clarified that the Government supported the Bill:

I thank my hon. Friend the Member for Salisbury (John Glen) for bringing forward a Bill on this important issue and for beating the Government to it. He will hopefully achieve a second change in the law. We have had a positive debate, and I have been struck by speeches from right across the House that have been considered, thoughtful, powerful, insightful and based upon experience. The Bill would remove wording from the statute book that is obsolete, unnecessary and wrong. As I shall explain, the wording currently on the statute book has no effect, but it represents a historical hangover from when it was possible that a seafarer—indeed, any employee—could be dismissed for being gay. That is no longer the case, but the laws that we pass in this place and that form our statute book represent, both practically and in the signals they send, the established morals and values of our country. It is right therefore that when the statute book contains wording that is inconsistent with those values we should change that wording. For that reason, the Government are happy to state now, formally, that we support this measure.<sup>11</sup>

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<sup>10</sup> [HC Deb 20 January 2017 c1180](#)

<sup>11</sup> *Ibid.*, c1236

## 4. Committee Stage

The Bill's Committee Stage took place on 8 February 2017.<sup>12</sup> The Bill has two clauses: one substantive clause repealing parts of the *Criminal Justice and Public Order Act 1994* and one clause dealing with commencement. The Bill, as introduced, was due to have a two-month commencement period, which is the default period. This was amended in Committee, such that the Bill would commence as soon as it receives Royal Assent. The amendment followed a point raised by Tom Pursglove MP during the Second Reading debate, where Mr Pursglove questioned the two-month delay.<sup>13</sup> The Bill's sponsor, John Glen, explained the amendment:

My amendment addresses the point made by my hon. Friend the Member for Corby on Second Reading, when he helpfully discussed commencement. He essentially argued that there did not need to be the customary two-month delay.

I am informed by parliamentary counsel that they default to a two-month commencement period unless there is some reason to consider a shorter or longer period. I have been advised that there will be no adverse consequence from an immediate commencement, hence the amendment. It amends clause 2 to set the date for commencement as the day on which the Bill is passed—that is, when it receives Royal Assent. I thank my hon. Friend for raising that issue. I hope that the amendment will strengthen the Bill's symbolic function in showing our determination to settle this matter as quickly as possible.<sup>14</sup>

Both the amendment and the Bill's clauses were agreed to without division.

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<sup>12</sup> [HC Deb 8 February 2017 c1-6](#)

<sup>13</sup> [HC Deb 20 January 2017 c1232](#)

<sup>14</sup> HC Deb 8 February 2017 cc3-4

## 5. Further reading

- [\*Merchant Shipping \(Homosexual Conduct\) Bill\*](#)
- [\*Merchant Shipping \(Homosexual Conduct\) Bill – Explanatory Notes\*](#)
- *Criminal Justice and Public Order Act 1994*, [sections 146-147](#)
- *Armed Forces Act 2016*, [section 14](#)
- [\*Equality Act 2010 \(Work on Ships and Hovercraft\) Regulations 2011 \(SI 2011/1771\)\*](#)
- ['MP seeks end to gay sex sack threat for UK flag seafarers'](#), Lloyd's List, 6 July 2016

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