



## In Focus

### Merchant Shipping (Homosexual Conduct) Bill (HL Bill 116 of 2016–17)

#### Key Provisions

The [Merchant Shipping \(Homosexual Conduct\) Bill](#) is a House of Commons private member's bill introduced by John Glen (Conservative MP for Salisbury) and is sponsored in the House of Lords by Baroness Scott of Bybrook (Conservative). The Bill has completed all stages in the House of Commons and is scheduled to have its second reading in the House of Lords on 6 April 2017.

The Bill would repeal sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994 which no longer have legal effect but remain in statute. These provisions originally allowed for the dismissal of a member of the crew of a merchant ship on the grounds of homosexual acts. Such a dismissal would now be illegal under subsequent legislation, including the Equality Act 2010.

In the Explanatory Notes that it produced for the Merchant Shipping (Homosexual Conduct) Bill on behalf of the Bill's sponsor, the Government outlined the following reasons why it believed repealing sections 146(4) and 147(3) of the 1994 Act was necessary: while these sections had no legal effect, they might be still be misinterpreted; they were no longer compatible with current values; and their removal would tidy up the statute book.<sup>1</sup>

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#### Background

The Criminal Justice and Public Order Act 1994 repealed provisions in the Sexual Offences Act 1967 that made homosexual acts an offence in the military and on a merchant ship. However, sections 146(4) and 147(3) of the 1994 Act stated that, although no longer an offence, such acts would be sufficient grounds for dismissal in the merchant navy or could form the basis for a prosecution under military discipline in the armed forces. Section 146(4) applied this to England and Wales, and Scotland while section 147(3) applied this to Northern Ireland.

Discriminatory employment practices are now unlawful under part 5 of the Equality Act 2010. The Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 establish that part 5 of the Equality Act 2010 extends to the crew of ships in the merchant navy. In Northern Ireland, workplace discrimination on the grounds of sexual orientation is illegal under the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003. This means that a sexual act could not now be grounds for disciplinary action in the merchant navy purely because it was a homosexual act.<sup>2</sup>

The Government removed references to homosexual acts in the armed forces from the 1994 Act in an amendment made to the Armed Forces Bill.<sup>3</sup> This Bill received royal assent in 2016. The Government

was unable to remove references to homosexual acts in the merchant navy because, as it is not part of the armed forces, it was found to be outside the scope of the Armed Forces Bill.

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## Commons Stages

The Merchant Shipping (Homosexual Conduct) Bill passed all of its House of Commons stages unopposed, receiving broad, cross-party support. An amendment, moved at committee stage by the Bill's sponsor, John Glen, proposed changing the date of implementation of the Bill, from two months after the Bill received royal assent, to the day of royal assent.<sup>4</sup> The amendment was agreed without a vote.

A further amendment was tabled at report stage, which would have applied the repeal of sections 146(4) and 147(3) of the 1994 Act retrospectively from the point that they had originally come into force. This amendment was tabled by Christopher Chope (Conservative MP for Christchurch), who argued that this would extend the Bill's symbolism.<sup>5</sup> During the debate on this amendment, it was noted by Philip Davies (Conservative MP for Shipley) that, were the repeal made retrospective, anyone discriminated against would have run out of time to be able to make a claim for wrongful dismissal.<sup>6</sup> Several MPs, including by Mr Glen and the Minister of State at the Department for Transport, John Hayes, disagreed with this amendment on the grounds that retrospective legislation should only be passed in exceptional circumstances and that the amendment to the Bill, if made and implemented, might create confusion on behalf of those believing that they might be claimants for wrongful dismissal.<sup>7</sup> The amendment was withdrawn.<sup>8</sup>

Speaking at third reading, Mr Glen described the Bill as, although short and simple, sending an important message that employment discrimination on the basis of sexual orientation would have no place in the UK.<sup>9</sup> Mr Hayes and the Shadow Secretary of State for Transport, Andy McDonald, also repeated their support for the Bill, with Mr Hayes arguing that the virtues of the Bill spoke for themselves.<sup>10</sup>

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## Further Information

- House of Commons Library, [Merchant Shipping \(Homosexual Conduct\) Bill](#), 23 February 2017
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<sup>1</sup> [Explanatory Notes](#), p 2.

<sup>2</sup> *ibid*, p 3.

<sup>3</sup> [HC Hansard, 11 January 2016, cols 600–5.](#)

<sup>4</sup> [Public Bill Committee, Merchant Shipping \(Homosexual Conduct\) Bill, 8 February 2017, session 2016–17, first sitting, cols 3–6.](#)

<sup>5</sup> [HC Hansard, 24 March 2017, cols 1087–8.](#)

<sup>6</sup> *ibid*, cols 1088–9.

<sup>7</sup> *ibid*, cols 1093–4 and cols 1095–6.

<sup>8</sup> *ibid*, col 1096.

<sup>9</sup> *ibid*, cols 1096–7.

<sup>10</sup> *ibid*, col 1098.

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