



### **Seafarers' Wages Bill [HL]**

### **HL Bill 38 of 2022–23**

Author: Nicola Newson

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On 20 July 2022, the second reading of the [Seafarers' Wages Bill \[HL\]](#) is scheduled to take place in the House of Lords.

The purpose of the bill is to ensure that 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 work they do while in UK waters. This would apply regardless of the nationality of the seafarer or the flag of the vessel. Currently, seafarers who work on international routes to or from UK ports are not entitled to the national minimum wage if they are not ordinarily resident in the UK; do not work at least to some extent in the UK; or work on non-UK flagged ships.

The bill is part of the government's nine-point plan in response to the actions of the ferry operator P&O Ferries, which made nearly 800 staff redundant in March 2022 without undertaking the required consultation procedures.

The bill would give harbour authorities the power to request that operators of international services covered by the bill provide a declaration that seafarers working to provide the service would be paid at a rate at least equivalent to the national minimum wage for their work in the UK or its territorial waters if they did not already qualify for the national minimum wage. Harbour authorities could impose a surcharge on service operators if they failed to provide a valid declaration. Harbour authorities could refuse access to the harbour if the operator failed to pay the surcharge. The secretary of state could appoint investigators to verify operators' compliance. The secretary of state would also have powers to direct how harbour authorities should use their powers, particularly whether or not to impose a surcharge and how much it should be.

Representatives of seafarers have expressed support for increasing wage protection for seafarers, but some have expressed doubts about whether the bill goes far enough. Both union representatives and the national body for ports and harbours have questioned the role of harbour authorities in assuring seafarers' pay, but the government believes the bill strikes a proportionate balance.

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## I. Background

### I.1 Redundancies at P&O Ferries

The [Seafarers' Wages Bill \[HL\]](#) is part of the government's response to the actions of the ferry operator P&O Ferries, which made hundreds of its staff redundant earlier this year. On 17 March 2022, P&O Ferries told nearly 800 employees that they were being made redundant with effect from that day.<sup>1</sup> Peter Hebblethwaite, chief executive officer of the company, told a joint session of the House of Commons Transport and Business, Energy and Industrial Strategy Committees that it had done this to bring in a different operating model.<sup>2</sup> This would require fewer staff, who would be employed by an agency and paid per hour worked. Mr Hebblethwaite said that this operating model would cost approximately half that of the previous model.<sup>3</sup> On international routes, workers' pay would be in line with, or above, minimum standards set by the International Transport Workers' Federation (ITF).<sup>4</sup> Mr Hebblethwaite said the average rate of pay on these routes would be £5.50 an hour, and the lowest rate would be £5.15 an hour.<sup>5</sup> On P&O Ferries' domestic route between Larne and Cairnryan, workers would be paid the UK national minimum wage.<sup>6</sup>

The way in which P&O Ferries made the redundancies gave rise to legal questions. Senior executives from the company told the House of Commons committees that they had knowingly broken the law by not consulting the relevant unions before terminating the workers' employment. Peter Hebblethwaite said "there is absolutely no doubt that we were required to consult with the unions. We chose not to do so".<sup>7</sup> Some commentators have also queried whether P&O Ferries breached the law by not giving enough notice of the redundancies to the relevant authorities. Under the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended), employers who plan to make 100 or more employees redundant within

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<sup>1</sup> BBC News, '[Outrage and no ferries after mass P&O sackings](#)', 18 March 2022.

<sup>2</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q98.

<sup>3</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q143.

<sup>4</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q148.

<sup>5</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q131 and Q145.

<sup>6</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q 131.

<sup>7</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q124.

90 days must notify the secretary of state in writing 45 days in advance. Not doing this would be a criminal offence. If the redundancies concern seafarers on vessels registered overseas, the employer must notify the overseas authorities of the state where the vessel is registered rather than the secretary of state. P&O Ferries vessels were registered in Cyprus, the Bahamas and Bermuda.<sup>8</sup> In evidence to the committees, Mr Hebblethwaite said that notification letters were sent to Cyprus, the Bahamas and Bermuda on 17 March 2022, the same day employees were told they were being dismissed. There has been discussion among legal commentators as to whether failure to notify a state other than the UK at the required time would be a criminal offence.<sup>9</sup>

The Insolvency Service has initiated formal civil and criminal investigations into the circumstances surrounding the redundancies.<sup>10</sup>

The bill addresses the issue of the payment of the UK national minimum wage, or equivalent, to seafarers. The other employment law issues relating to the redundancies are discussed further in the House of Lords Library briefing '[Queen's Speech 2022: Transport](#)' (5 May 2022) and the House of Commons Library briefing '[P&O Ferries: Employment law issues](#)' (19 April 2022).

## 1.2 Seafarers and the national minimum wage

### UK legislation

Not all seafarers working in UK waters are legally entitled to receive the national minimum wage. Seafarers who work on international routes to or from UK ports are not entitled the national minimum wage if they are not ordinarily resident in the UK; do not work at least to some extent in the UK; or work on non-UK flagged ships.<sup>11</sup> The government has noted this means that UK-based agents are less cost competitive and UK-flagged vessels face a disincentive to employ UK-resident seafarers.<sup>12</sup>

Rights relating to the national minimum wage are set out in a combination of primary and secondary legislation. The National Minimum Wage Act 1998

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<sup>8</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q100.

<sup>9</sup> House of Commons Transport Committee and House of Commons Business, Energy and Industrial Strategy Committee, '[Oral evidence: P&O ferries](#)', 24 March 2022, HC 1231 of session 2021–22, Q6; and House of Commons Library, '[P&O Ferries: Employment law issues](#)', 19 April 2022, pp 11–14.

<sup>10</sup> Insolvency Service, '[P&O Ferries: Update from the Insolvency Service](#)', 1 April 2022.

<sup>11</sup> Department for Transport, '[Harbours \(Seafarers' Remuneration\) Bill consultation](#)', 10 May 2022, p 5.

<sup>12</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 5.

provides that a person is entitled to receive the national minimum wage if they are an individual who:

- (a) is a worker,
- (b) is working, or ordinarily works, in the United Kingdom under his contract; and
- (c) has ceased to be of compulsory school age.<sup>13</sup>

The act includes specific provision on mariners: section 40 states that people employed to work on board UK-flagged ships shall be treated as ordinarily working in the UK unless their employment is wholly outside the UK or they are not ordinarily resident in the UK. This means that as long as the individual is ordinarily resident in the UK and is employed to at least some extent in the UK, they would qualify for the national minimum wage (subject to other requirements of the act) no matter where the ship was at any given time.<sup>14</sup> However, share fisherman—masters of members of the crew of a fishing vessel who are remunerated only by a share in the vessel's profits or earnings—do not qualify for the national minimum wage.<sup>15</sup>

Secondary legislation made under section 42 of the act sets out the entitlement of people in “offshore employment” to the national minimum wage. The National Minimum Wage (Offshore Employment) Order 1999 extends the provisions of the act to individuals who are working, or who ordinarily work, in the territorial waters of the UK or in the UK section of the continental shelf. The order states that it applies “to individuals whether or not they are British subjects, and to bodies corporate whether or not they are incorporated under the law of the United Kingdom, and applies even when the application may affect their activities outside the United Kingdom”.

When the order was originally made in 1999, it did not apply to employment in connection with a ship in the course of navigation or engaged in dredging or fishing. The effect of this was that offshore workers working on oil or gas rigs or offshore renewable installations were eligible for the national minimum wage, but the 1999 order did not entitle seafarers to the national minimum wage if they did not already qualify under section 40 of the act.<sup>16</sup>

Introducing a national minimum wage for all seafarers working in UK territorial waters, affording them the same protections as land-based workers, was a recommended action in the Department for Transport's

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<sup>13</sup> [National Minimum Wage Act 1998](#), s 1(2).

<sup>14</sup> Department for Transport, '[Explanatory memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#)', July 2020, p 2.

<sup>15</sup> [National Minimum Wage Act 1998](#), s 43.

<sup>16</sup> Department for Transport, '[Explanatory memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#)', July 2020, p 2.

'Maritime 2050: Navigating the future' strategy, published in 2019.<sup>17</sup> In 2020, the government used secondary legislation to extend the coverage of the national minimum wage. The National Minimum Wage (Offshore Employment) (Amendment) Order 2020 amended the 1999 order. Instead of excluding ships in the course of navigation or engaged in dredging or fishing from the definition of "offshore employment", only individuals "employed for the purposes of activities on a ship exercising the right of innocent passage or the right of transit passage" would be excluded. The government explained this would mean a wider range of workers would be entitled to the UK national minimum wage:

[...] in particular, workers on fishing vessels in UK territorial waters (other than share fishers), workers on dredgers in UK territorial waters and the UK sector of the continental shelf and other seafarers working domestically in UK territorial waters will be entitled to the national minimum wage, irrespective of whether they are ordinarily resident in the UK or are employed to any extent in the UK, and irrespective of where the vessel on which they are employed is registered (or whether it is registered at all). The UK does not have flag restrictions (the flag of the state where the vessel is registered) for vessels operating domestically in UK territorial waters and therefore vessels registered in other states operate domestically in UK territorial waters.<sup>18</sup>

However, the government recognised that some seafarers in UK waters would still be excluded from qualifying for the national minimum wage, even after the 2020 amendment. It said that the UN Convention on the Law of the Sea did not allow a coastal state to adopt laws imposing a minimum wage for workers on vessels exercising the right of innocent passage.<sup>19</sup> The government said that vessels entering UK territorial waters as part of an international voyage are considered to be exercising the right of innocent passage. This would include ferry services between the UK and mainland Europe, including the Republic of Ireland, and voyages calling at a British port as part of a longer international, multi-port voyage.

During a debate on the 2020 amendment order, Viscount Younger of Leckie, speaking for the government, said he was aware that "concern remains that ferry routes are largely not covered by the amendments and that some ferry services may be using low-cost employment models".<sup>20</sup> He explained that routes between Great Britain and Northern Ireland, the Scottish ferries and other domestic services were covered by minimum wage legislation, but

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<sup>17</sup> Department for Transport, '[Maritime 2050: Navigating the future](#)', January 2019, p 148.

<sup>18</sup> Department for Transport, '[Explanatory memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#)', July 2020, pp 2–3.

<sup>19</sup> Department for Transport, '[Explanatory memorandum to the National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#)', July 2020, p 3.

<sup>20</sup> [HL Hansard, 25 June 2020, cols 431–2.](#)

ferries operating to the rest of Europe were on international voyages and, unless flagged as UK vessels, were outside UK jurisdiction. He said the government was committed to improving standards and would “consider other options in regard to these operations”.

### **International Labour Organization basic minimum wage**

There are international recommendations for a basic minimum wage for seafarers. A guideline under the Maritime Labour Convention provides that the basic pay or wages of an able seafarer for a calendar month of service should be no less than the amount periodically set by the Joint Maritime Commission or another body authorised by the governing body of the International Labour Organization (ILO).<sup>21</sup> The Maritime Labour Convention entered into force in 2013 and has been ratified by 101 ILO member states, representing 96.6% of world shipping tonnage. Guidelines under the Maritime Labour Convention are non-mandatory.<sup>22</sup> The Joint Maritime Commission is a body of shipowners and seafarers established by the ILO. The Joint Working Group of the JMC meets every two years to agree on a basic minimum wage.<sup>23</sup>

### **Rates**

The current UK national minimum wage for those aged 23 and over is £9.50 an hour.<sup>24</sup> This is also referred to as the ‘national living wage’. Lower national minimum wage rates apply for younger age groups:

- those aged 21 and 22 receive £9.18 an hour
- those aged 18 to 20 receive £6.83 an hour
- under-18s and apprentices receive £4.81 an hour

The rates change on 1 April each year.

The ILO recommended minimum basic wage for an able seafarer with effect from 1 July 2022 is US\$648 per month.<sup>25</sup> This equates to approximately £540 per month.<sup>26</sup> The ILO wage is based on normal working hours of

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<sup>21</sup> International Labour Organization, ‘[ILO body adopts new minimum monthly wage for seafarers](#)’, 18 May 2022.

<sup>22</sup> International Labour Organization, ‘[Explanatory note to the regulations and code of the Maritime Labour Convention](#)’, accessed 11 July 2022.

<sup>23</sup> International Transport Workers’ Federation, ‘[Wages](#)’, accessed 7 July 2022.

<sup>24</sup> HM Government, ‘[National minimum wage and national living wage rates](#)’, accessed 7 July 2022.

<sup>25</sup> 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](#)’, May 2022, p 6.

<sup>26</sup> Currency conversion using rates from [www.xe.com](http://www.xe.com) as of 7 July 2022.

8 hours per day, 48 hours per week, which equates to 208 hours per month.<sup>27</sup> A wage of £540 for a 208-hour month equates to an hourly rate of £2.60. The ILO recommended wage is set to rise to:<sup>28</sup>

- US\$658 as of 1 January 2023 (approximately £548 a month, or £2.63 an hour)
- US\$666 as of 1 January 2024 (approximately £555 a month, or £2.67 an hour)
- US\$673 as of 1 January 2025 (approximately £560 a month, or £2.69 an hour)

### 1.3 Government response to P&O Ferries situation

#### Commitment to legislate

Speaking at prime minister's questions a few days after P&O Ferries dismissed its staff, Boris Johnson said the government "condemn[ed] the callous behaviour of P&O".<sup>29</sup> He said the government would be "taking steps to protect all mariners who are working in UK waters and ensure that they are paid the living wage".

A few days later, Transport Secretary Grant Shapps set out a nine-point plan to respond to P&O Ferries' actions, including a commitment to bringing in legislation to address payment of the UK national minimum wage. In a statement to the House of Commons on 30 March 2022, Mr Shapps said that the government would give British ports new statutory powers to refuse access to regular ferry services that did not pay their crew the national minimum wage.<sup>30</sup> He said that this would be done through primary legislation amending the Harbours Act 1964. Mr Shapps explained that the government had initially planned to introduce more wage protection for workers by changes to the National Minimum Wage Act 1998. However, it had been advised that this would not be effective because "maritime law is governed by international conventions that would too easily override changes to domestic laws".

Mr Shapps said that if companies such as P&O Ferries wanted to dock in ports such as Dover, Hull or Liverpool, the new legislation would mean they had no choice but to pay their crew the UK minimum wage.<sup>31</sup> He said this would mean that "P&O Ferries can derive no benefit from the action it has

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<sup>27</sup> International Transport Workers' Federation, '[Wages](#)', accessed 7 July 2022.

<sup>28</sup> International Labour Organization, '[ILO body adopts new minimum monthly wage for seafarers](#)', 18 May 2022. Currency conversion using rates from [www.xe.com](http://www.xe.com) as of 7 July 2022.

<sup>29</sup> [HC Hansard, 23 March 2022, col 325.](#)

<sup>30</sup> [HC Hansard, 30 March 2022, cols 840–2.](#)

<sup>31</sup> [HC Hansard, 30 March 2022, col 842.](#)



disgracefully taken”, and its “cynical attempt” to replace its staff with lower-paid workers would fail.

In a letter to Mr Shapps, Mr Hebblethwaite said that P&O Ferries did not oppose the introduction of new minimum wage legislation.<sup>32</sup> He said that most of P&O’s anticipated savings “would come from the removal of job duplication and the benefits of increased flexibility”. He said that “even if the national minimum wage were to be applicable, the need to adopt a different crewing model would not change”.

### **Minimum wage corridors**

Mr Shapps said that another element of the nine-point plan was engagement with international partners.<sup>33</sup> He said he had contacted his counterparts in France, Denmark, the Netherlands, Ireland and Germany to discuss the idea that maritime workers on direct routes between these countries should receive a minimum wage. He said he would now work with his counterparts to explore the creation of “minimum wage corridors” between their nations, and ask unions and operators to agree common levels of protection for seafarers on these routes.

When asked recently about the progress of these discussions, the government said Mr Shapps had written to his counterparts in France, Belgium, Ireland, Spain, Denmark, Germany, the Netherlands and Norway to explore the development of bilateral minimum wage corridors.<sup>34</sup> In addition, Mr Shapps and/or officials have held bilateral discussions with the governments of France, Belgium, Spain and Germany about seafarer protections and welfare.

### **1.4 Queen’s Speech 2022**

The bill was not directly mentioned in the May 2022 Queen’s Speech, but it was included in a background briefing published by the Prime Minister’s Office.<sup>35</sup> This announced 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 government said 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

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<sup>32</sup> P&O Ferries, ‘[Official Twitter account](#)’, 29 March 2022.

<sup>33</sup> [HC Hansard, 30 March 2022, col 841](#).

<sup>34</sup> House of Commons, ‘[Written question: Shipping: Minimum wage](#)’, 4 July 2022, 26741.

<sup>35</sup> Prime Minister’s Office, ‘[Queen’s Speech 2022](#)’, 10 May 2022.

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 flags

## 1.5 Consultation

The government published a consultation document on 10 May 2022, the same day as the Queen's Speech.<sup>36</sup> The consultation sought views on the scope of services to which national minimum wage equivalence requirements should apply and the proposed compliance process. The consultation ran until 7 June 2022.

The government published the consultation outcome document and an impact assessment on 6 July 2022, the same day the bill was introduced in the House of Lords.<sup>37</sup> The consultation received 49 responses.<sup>38</sup> The government noted that the main themes that emerged in comments about the principles of the bill were about ensuring compatibility with international law, particularly the UN Convention on the Law of the Sea. On questions about how best to define a national minimum wage equivalent for seafarers, some respondents stated the view that seafarer remuneration should only be considered at an international level under existing frameworks.<sup>39</sup> Some operators and unions emphasised the importance of wider employment protections—as addressed in the government's nine-point plan—and some suggested this should be linked to the legislation.<sup>40</sup> The government said that many respondents disagreed with the proposed role of statutory harbour authorities in verifying that operators were paying seafarers the national minimum wage equivalent and in imposing surcharges if they were not compliant. The government noted that it had made changes to the proposed scope of the legislation following responses to the consultation.<sup>41</sup>

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<sup>36</sup> Department for Transport, '[Harbours \(Seafarers' Remuneration\) Bill consultation](#)', 10 May 2022.

<sup>37</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022 and '[Seafarers Wages Bill: Final impact assessment](#)', dated 5 July 2022, published 6 July 2022.

<sup>38</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 8.

<sup>39</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 8.

<sup>40</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 9.

<sup>41</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 8.

## 2. Bill provisions

### 2.1 Overview

The government has set out the following overview of the purpose of the bill:

The purpose of the bill is to grant protection to seafarers working on ships that regularly (at least once every 72 hours) use UK ports by ensuring that they are paid at least an equivalent rate to the UK national minimum wage (NMWe) while in UK waters, irrespective of the nationality of the seafarer or the flag of the vessel. The term 'NMWe' is used throughout this document [the explanatory notes to the bill] reflecting the fact that the bill makes no changes to national minimum wage legislation. In practice, the government's intention is that NMWe will enable seafarers within scope to be accorded the same minimum pay for core hours worked whilst in UK waters as those working on domestic services that already qualify for NMW, ie currently £9.50 per hour for those 23 years old and over. The government considers the creation of such a condition upon port access to be the most effective mechanism to ensure application to ships and therefore seafarers calling frequently at UK ports, while observing international obligations.

To enable this, the bill:

- empowers harbour authorities and the secretary of state (including through the Maritime and Coastguard Agency (MCA)) to make payment of an equivalent rate to the national minimum wage a condition of access to UK ports;
- explicitly empowers harbour authorities to levy surcharges and suspend access to ports in order to incentivise compliance; and
- empowers the secretary of state to make directions in respect of these provisions.<sup>42</sup>

### 2.2 Introductory provisions

Clause 1 sets out 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". It would not apply to services for the purpose of leisure or recreation, or to services provided by a fishing vessel. "Ship" would include any kind of vessel used in navigation, as well as hovercraft.

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<sup>42</sup> [Explanatory notes](#), p 2.

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

### 2.3 National minimum wage equivalence declarations

Clauses 3 to 6 make provision about national minimum wage equivalence declarations. Clause 3 contains details about the power to request a declaration. It would enable a harbour authority to request the operator of a service covered by the bill to provide a national minimum wage equivalence declaration when using the authority's harbour. Clause 13 specifies that 'harbour' and 'harbour authority' have the same meanings as in the Harbours Act 1964 (for England, Wales and Scotland) and the Harbours Act (Northern Ireland) 1970 (for Northern Ireland). Clause 3 provides that a harbour authority can request a national minimum wage equivalence declaration only where it appears to the authority that ships providing the service will have entered the harbour on at least 120 occasions in the year covered by the declaration. The government states that this equates to services calling in the UK at least once every 72 hours on average over a year.<sup>43</sup> Following the consultation, the government assesses that this definition will "keep the scope of the bill tightly confined to those seafarers with close links to the UK without singling out any particular service or vessel type and avoiding ambiguity around vessel definitions".<sup>44</sup>

Clause 3 would allow the secretary of state to make regulations restricting the circumstances in which harbour authorities could request a national minimum wage equivalence declaration. The secretary of state could also use this power to make regulations setting out the form or manner in which a declaration must be provided. The government has stated this power will allow the secretary of state to set out administrative and procedural arrangements for requesting and providing declarations once the precise method for calculating the national minimum wage equivalent has been decided.<sup>45</sup>

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<sup>43</sup> [Explanatory notes](#), p 3.

<sup>44</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 13.

<sup>45</sup> Department for Transport, '[Seafarers' Wages Bill: Delegated powers memorandum](#)', 11 July 2022, pp 3–4.

Clause 3 would also make it an offence for an operator to operate a service inconsistently with their declaration and to fail to inform the harbour authority of that fact 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

Someone summarily convicted of an offence under this provision 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. There is no maximum fine on summary conviction in England and Wales.<sup>46</sup> Level 5 on the standard scale for summary convictions in Scotland and Northern Ireland is £5,000.<sup>47</sup>

Clause 4 sets out further details about the nature of declarations. 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

Clause 4 provides that the national minimum wage equivalent is an hourly rate specified in regulations. Clause 4 would enable the secretary of state to make regulations determining the hourly rate, what qualifies as UK work, and currency conversion. Clause 4 defines 'UK work' as work which is carried out in the UK or its territorial waters.

The method for calculating the national minimum wage is set out in the National Minimum Wage Regulations 2015. The government has explained that as the bill would not directly extend entitlement to the national minimum wage to non-qualifying seafarers, the 2015 regulations would not directly apply for calculating the national minimum wage equivalent.<sup>48</sup> However, 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". The government anticipates updating the

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<sup>46</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2021, s 85.

<sup>47</sup> Criminal Procedure (Scotland) Act 1995, s 225 and Fines and Penalties (Northern Ireland) Order 1984, article 5.

<sup>48</sup> Department for Transport, '[Seafarers' Wages Bill: Delegated powers memorandum](#)', 11 July 2022, p 5.

national minimum wage equivalent rate regularly, as is done for the annual revision of the national minimum wage rate.<sup>49</sup>

When making regulations under this power, the secretary of state would be obliged to “seek to secure that a non-qualifying seafarer is for the purposes of this section remunerated at a rate equal to the national minimum wage equivalent only if their remuneration is in all the circumstances broadly equivalent to the remuneration they would receive if they qualified for the national minimum wage”.

Clause 5 would allow the secretary of state to require operators to provide information so that the secretary of state could establish whether the operator was operating their service consistently with their national minimum wage equivalent declaration. It would be an offence for the operator to fail to provide the requested information; provide false or misleading information; or not to inform the secretary of state within four weeks if information already provided becomes false or misleading. Someone summarily convicted of an offence under this provision 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.

Clause 6 would allow an inspector appointed by the secretary of state to board a ship in a UK harbour or enter any premises to establish whether a service covered by the bill was being operated consistently with a declaration, or to verify any information provided to the secretary of state under clause 5. 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. 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

Someone summarily convicted of an offence under this provision 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.

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<sup>49</sup> Department for Transport, [‘Seafarers’ Wages Bill: Delegated powers memorandum’](#), 11 July 2022, p 5.

The government has stated that clauses 5 and 6 would allow the Maritime and Coastguard Agency to play an enforcement role in checking the validity of declarations.<sup>50</sup> The government said this would be done through intelligence-based checks in the event of credible evidence suggesting a possibly false or misleading declaration and through random spot-checks.

## 2.4 Surcharges

Clauses 7 to 9 deal with the imposition of surcharges and restriction of harbour access where operators have not provided a valid national minimum wage equivalence declaration. If an operator has not submitted a declaration when requested 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. The amount of the 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. On the level of surcharges, the government has stated:

While harbour authorities will retain an element of discretion in determining the amount of a surcharge, the regulations under clause 7(5) will set out a framework to ensure consistency of approach across different harbour authorities [...]

In general, harbour charges are not fixed by legislation, and harbour authorities have experience in formulating charges for harbour services, for example towage and conservancy fees, based on the average metrics of a vessel. Harbour authorities have a commercial interest in being proportionate in terms of how a surcharge would be fixed.<sup>51</sup>

Subsection 7(7) would also give the secretary of state power to make regulations about procedural and administrative arrangements relating to surcharges, such as 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.

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.

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<sup>50</sup> [Explanatory notes](#), p 9.

<sup>51</sup> Department for Transport, '[Seafarers' Wages Bill: Delegated powers memorandum](#)', 11 July 2022, pp 7–8.

Clause 8 would allow objections to be made to surcharges. 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 imposed

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. 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. The secretary of state could direct a harbour authority to repay a surcharge. The secretary of state’s decision would have to be communicated to the harbour authority and the operator and published online. The government has said that the power in clause 8 “broadly mirrors” existing powers in the Harbours Act 1963 and the Harbours Act (Northern Ireland) 1970 for the secretary of state to consider objections to certain harbour charges and make a direction in response.<sup>52</sup> Clause 11 would make it an offence for a harbour authority to fail to comply with a direction from the secretary of state under clause 8.

Clause 9 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 imposed by the harbour authority. The harbour authority could refuse access even if an objection had been made to the surcharge. However, the harbour authority could not refuse access to a harbour:

- in cases of force majeure<sup>53</sup>
- 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 ship

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

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<sup>52</sup> Department for Transport, ‘[Seafarers’ Wages Bill: Delegated powers memorandum](#)’, 11 July 2022, p 9.

<sup>53</sup> ‘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 (Thomson Reuters, ‘[Practical Law: Glossary—Force majeure](#)’, accessed 12 July 2022).



## 2.5 Supplementary provisions

Clause 10 provides that in England and Wales and Northern Ireland, proceedings relating to offences under the bill would be brought by the secretary of state. The government has said that this would be done through the Maritime and Coastguard Agency.<sup>54</sup>

Clause 11 contains provision about directions and guidance made by the secretary of state. It would enable the secretary of state to give guidance to harbour authorities about how to exercise their powers under the bill. Harbour authorities would be obliged to have regard to guidance given by the secretary of state.

Clause 11 would also empower the secretary of state to direct a harbour authority to exercise, or not exercise, any of its powers under the bill, or to exercise them in a particular way. In particular, this could include directing a harbour authority to impose or not impose a surcharge, or to impose a specified amount rather than the amount determined by the harbour authority's tariff. A harbour authority would be obliged to comply with any direction from the secretary of state given to it under this clause or clause 8. Failure to do so would be an offence, which would be liable on summary conviction to a fine not exceeding level 4 on the standard scale. This is currently set at £2,500.<sup>55</sup>

The government has commented that it expects harbour authorities will exercise their discretionary powers under the bill in a manner that is consistent with the policy intention.<sup>56</sup> However, one particular way in which the government anticipates the direction-making power might be needed is to do with imposing surcharges:

[...] there is a risk that harbour authorities may decline to impose a surcharge in the event that an operator fails to provide a NMWe declaration, in which case there will not be any incentive for operators to pay NMWe to non-qualifying seafarers. In such circumstances, it is anticipated that the secretary of state may decide to issue a direction to the harbour authority requiring it to charge the surcharge.<sup>57</sup>

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 section 15).

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<sup>54</sup> [Explanatory notes](#), p 10.

<sup>55</sup> Sentencing Act 2020, s 122; Criminal Procedure (Scotland) Act 1995, s 225; and Fines and Penalties (Northern Ireland) Order 1984, article 5.

<sup>56</sup> Department for Transport, '[Seafarers' Wages Bill: Delegated powers memorandum](#)', 11 July 2022, p 13.

<sup>57</sup> Department for Transport, '[Seafarers' Wages Bill: Delegated powers memorandum](#)', 11 July 2022, p 13.

## 2.6 General provisions

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). 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.

Clause 14 defines other terms used in the bill.

Clause 15 provides that the bill extends 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.

## 3. Reaction

Representatives of seafarers have expressed support for increasing protection for seafarers, but some have expressed doubts about whether the bill goes far enough. Deborah Layde, chief executive of the Seafarers' Charity, said her organisation welcomed the bill as "an important step in recognising the substantial contribution seafarers make to our economy in what can be a very demanding job".<sup>58</sup> The charity fully supported efforts to ensure all seafarers receive equivalent pay and protections to those working ashore.

Nautilus International, a trade union for seafarers and maritime professionals, welcomed the government taking action on the minimum wage.<sup>59</sup> However, the union said there were "loopholes within the bill that must be addressed if it is to meaningfully support fair pay at sea". It questioned whether harbour authorities were the appropriate bodies to enforce the national minimum wage for seafarers. Mark Dickinson, the general secretary of Nautilus International, argued that the bill would allow operators to "mark their own homework" because some ferry operators were also port authorities.<sup>60</sup> The government noted in the consultation outcome document that some respondents had raised this potential conflict of interest.<sup>61</sup> However, it said that the secretary of state would have powers to direct a harbour authority to levy a surcharge or deny access to a port, and failure to comply could result in a prosecution.

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<sup>58</sup> Department for Transport, '[New bill introduced to ensure thousands of seafarers receive fair pay](#)', 6 July 2022.

<sup>59</sup> Nautilus International, '[P&O Ferries: Nautilus to lobby against loopholes in new UK minimum wage legislation](#)', 7 July 2022.

<sup>60</sup> Maritime Executive, '[UK advances Seafarer Minimum Wage Bill while unions and ports object](#)', 7 July 2022.

<sup>61</sup> Department for Transport, '[Government response: Seafarers' Wages Bill consultation](#)', 6 July 2022, p 15.

Nautilus International also suggested that because the bill did not place a duty on harbour authorities to ask operators for data on seafarer pay, there was an “ambiguity” at the heart of the bill.<sup>62</sup> It also noted that services that operate less frequently from UK ports would not be covered by the bill. Nautilus International said it would be “strongly lobbying for improvements” as the bill progresses.

The UK Chambers of Shipping, the trade association for the shipping industry, also suggested it would be lobbying on the bill, although for different reasons. It argued that it was “vital that as this bill passes through Parliament it avoids undermining or cutting across [...] established international agreements [on the protection of seafarers’ rights], which would cause confusion and complication”.<sup>63</sup> It said it would work to ensure the legislation was “fit for purpose and of practical assistance for seafarers whilst cementing the UK’s position among the world’s leading maritime nations”.

When the bill was announced at the time of the Queen’s Speech, the British Ports Association (BPA), the national body for ports and harbours, expressed concern “at the expectations of [the] UK government to use ports as a tool to police shipping”.<sup>64</sup> The BPA said that the industry was “not equipped for these challenges”. Richard Ballantyne, chief executive of the BPA, argued that ports were not regulators, and the job of enforcing the minimum wage should be given to the Maritime and Coastguard Agency or HM Revenue and Customs. The government noted in the consultation outcome document that many respondents had disagreed with the proposed role for harbour authorities.<sup>65</sup> However, it argued that the bill struck a “proportionate balance of roles”. It said statutory harbour authorities would receive operators’ declarations, but any verification, investigation and enforcement would be done by the Maritime and Coastguard Agency.<sup>66</sup>

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<sup>62</sup> Nautilus International, ‘[P&O Ferries: Nautilus to lobby against loopholes in new UK minimum wage legislation](#)’, 7 July 2022.

<sup>63</sup> UK Chambers of Shipping, ‘[Seafarers’ Wages Bill](#)’, 6 July 2022.

<sup>64</sup> British Ports Association, ‘[BPA reacts to new Harbours \(Seafarers’ Remuneration\) Bill](#)’, 10 May 2022.

<sup>65</sup> Department for Transport, ‘[Government response: Seafarers’ Wages Bill consultation](#)’, 6 July 2022, p 8.

<sup>66</sup> Department for Transport, ‘[Government response: Seafarers’ Wages Bill consultation](#)’, 6 July 2022, p 15.

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