

IMPLICATIONS FOR EMPLOYERS OF THE SEAFARERS WAGES ACT 2023

The UK Government wishes to enhance the legal protection of seafarers working on those ships which regularly call at UK ports. Its flagship legislation in this regard is the Seafarers Wages Act 2023 (the Act)¹, which, once in force, is likely to have a significant impact on those operators whose ships regularly call at UK ports. The Act received Royal Assent on 23 March 2023, but will not enter into force until sometime in 2024.

National Minimum Wage

The Government's aim is to ensure that seafarers with close ties to the UK are paid, at least, an amount equivalent to the UK National Minimum Wage (**UK NMW**) whilst they are on ships operating in UK territorial waters.

NMW – Current Position

The UK NMW applies to the work of someone who "is working, or ordinarily works" in the UK. The rate is currently £10.42 per hour for workers aged 23 and over. At present, this applies to those seafarers:

- who work or ordinarily work in the territorial waters of the UK, irrespective of their place of residency or the flag of the vessel on which they are employed. This would include all seafarers working on domestic (short sea) UK routes and all those seafarers ordinarily working on the UK's continental shelf in connection with the exploration or exploitation of the seabed or subsoil;
- who work on a UK flagged vessel if they are ordinarily resident in the UK, and the employment is not wholly outside the UK. This would include a seafarer working on a route between the UK and Europe who is resident in the UK, but not a seafarer on a UK flagged deep sea vessel which operates wholly outside UK territorial waters (even if the seafarer is ordinarily resident in the UK); and
- who work on a non-UK flagged vessel if the seafarer "ordinarily works in the UK". All the seafarer's circumstances should be considered when attempting to determine whether they have a sufficiently strong connection to the UK to be considered to fall within the definition of "ordinarily working in the UK". Factors for consideration may include where a tour of duty begins and ends, where tax is paid and the currency the seafarer is paid in.

Exceptions to the above apply to vessels entering UK waters as part of an international voyage (innocent passage) and vessels exercising their right of transit passage through straits which connect to the high seas.

NMW - Under the Act

Once in force, the Act will apply to all vessels which call at a UK port at least 120 times a year and are providing "a service 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." The Act will apply irrespective of the nationality of the seafarer or their place of residency or the flag state of the vessel on which they are employed.

Unhelpfully, the term 'service' is not defined and it is therefore unclear to whom and when the obligation to pay the equivalent of the UK NMW actually applies. During the debate on the Seafarers' Wages Bill (as it then was), the House of Lords recognised the confusion around the definition and practicality of the term "service" and wondered whether this should in fact refer to a "vessel" instead.

The Chamber of Shipping argued that use of the word "services" and not "ships" could mean that the Act will apply to vessels with minimal ties to the UK. For example, a "service" could be the carriage of goods from Shanghai to London Gateway on a liner service. If that liner service were to service UK ports 4 times a week or more as part of a

¹ [Seafarers Wages Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

regular schedule, then all of the seafarers working on the vessels serving that schedule could potentially be within the scope of the Act.

We understand that the Government resisted efforts to change the reference from "service" to "vessel" so as to prevent operators from switching ships in and out of a particular service in an attempt to avoid having to pay seafarers on those particular vessels the UK NMW.

Who will be affected by the Act?

Clearly those engaged in the short sea sector, and in particular the ro-ro and ro-pax trades will be most significantly affected by the Act. The Act will apply to most, if not all ferry services operating between the UK and Europe. As noted above, seafarers working on domestic UK routes are already entitled to the UK NMW and as such there will be no change in the protections offered to them.

Who is excluded from the Act's scope?

The Act specifically excludes vessels used for the purposes of leisure or recreation or fishing. What is meant by "leisure or recreation" is not defined; however, it is our current view that vessels such as cruise ships and yachts (the latter, whether operating privately or commercially) will fall outside the scope of the Act, regardless of how frequently they enter a UK port.

Leaving aside the ambiguity around what is meant by "service", we do not think the liner industry will be caught, because the Government clearly intended the Act to apply to vessels which regularly called at the UK and which likely had crews with the closest ties to the UK. This being said, it is possible that the Act might apply to vessels engaged, for example, in feeder services between the UK and Europe, but for it to do so they will need to call at a UK port at least every 72 hours and with the operators' ability to amend their scheduling, it is to be presumed that this will affect few, if any, such vessels.

All those operating vessels which regularly call at UK ports should give the matter careful consideration as and when secondary legislation is passed under the Act to clarify what constitutes a "service". The position may change, especially in the wider context of union pressure and / or any negative publicity.

Enforcement of the SWA

The UK's harbour authorities are tasked with enforcing the Act, which has caused much controversy, with [the British Ports Association arguing](#) that harbour authorities are not equipped to police the Act and that enforcement should be undertaken by the Maritime and Coastguard Agency (the **MCA**)².

Nonetheless, the UK's harbour authorities have been required to ensure compliance and where one has reasonable grounds to believe that a vessel providing a service to which the Act applies will enter or has entered its port on at least 120 occasions in a year, that harbour authority must request the operator of the service to provide them with a national minimum wage equivalence declaration in respect of the service for the relevant year.

The efficacy of the Act will depend, to a significant extent, on how actively the UK's harbour authorities seek such declarations of compliance from vessels entering their ports. However, those who do not, risk being fined and thus UK ports are likely to do their best to ensure compliance.

Upon receipt of such a request from a harbour authority, a vessel's operator must provide a declaration that either:

- the seafarers working onboard the applicable vessel already qualify for the UK NMW under the National Minimum Wage Act 1998 (as amended); or
- the seafarers that do not already qualify for the UK NMW are paid an equivalent rate for their work in the UK or its territorial waters.

The NMW equivalent will be set out in regulations (yet to be published). "UK work" is defined as work which is carried out in the UK or its territorial waters. We await further guidance/regulation regarding how the amount of work performed in UK waters (i.e. the number of hours) will be calculated.

² <https://www.britishports.org.uk/seafarers/>

Failure to comply

Harbour authorities will be required to apply surcharges (in amounts yet to be determined) to operators who: fail to provide a declaration or provide it late; provide a declaration and then operate in a way that is inconsistent with it; or provide a false or misleading declaration. If an operator does not pay the surcharge, either within a specified time or at all, harbour authorities must refuse access to the harbour. The Act also contains criminal sanctions under which both operators and harbour authorities may be liable.

An operator will be guilty of an offence and liable on summary conviction to, in England and Wales, a fine and, in Scotland and Northern Ireland, a fine not exceeding level 5 on the standard scale if they provide a declaration and then operate in a way that is inconsistent with it or provide a false or misleading declaration.

Harbour authorities that do not refuse harbour access in circumstances where the Act requires them to do so will also be guilty of an offence and liable on summary conviction to, in England and Wales a fine, and in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

The Secretary of State may also appoint investigators from the MCA to verify that operators are complying with the Act.

Comment

The UK Government stated in its response to the [Seafarers' Wages Bill Consultation](#)³ that using frequency of entry to UK ports as the determinative factor (rather than defining which service types were in scope) was intended to avoid ambiguity around vessel definitions and to ensure that the legislation is confined to those seafarers with close links to the UK. Whilst this may be a logical approach, it does mean that careful consideration and analysis will need to be undertaken to determine whether a specific vessel/service at a specific time will fall within the scope of the Act, as it cannot be assumed that it will only apply to ferries operating short routes between Europe and the UK.

The Act is likely to have significant consequences for the UK maritime cluster, but it is an imperfect piece of legislation and unless clarified in a number of ways, not least with regard to the definition of what constitutes a "service," confusion is likely to reign.

As and when the promised regulations are published, operators should consider them carefully and, if in doubt as to the Act's application to their business, seek advice. The consequences for non-compliance should not be ignored. They will range from the potential for reputational damage (as, in the current political climate, such things will almost certainly find their way into the public realm), fines and ultimately a ban on their vessel entering UK ports, with all the disruption that this has the potential to cause.

Leaving aside the Act, the UK Government is still considering further regulations and legislation in the area of seafarers' wages and, more generally, employment conditions. There have been discussions between the UK, France, Denmark and the Netherlands on imposing a minimum maritime workers' wage. Could this be the opening for pan-European minimum wages for seafarers?

For more information, please contact the author(s) of this alert



MICHELLE CHANCE

Partner, London

T +44 (0)20 7264 8384

E michelle.chance@hfw.com



LYDIA CAMMIADE

Associate, London

T +44 (0)20 7264 8011

E lydia.cammiade@hfw.com

Research conducted by Ellie Gilbert, Trainee Solicitor

³ [Seafarers' Wages Bill Consultation: government response \(publishing.service.gov.uk\)](#)