EXPLANATORY MEMORANDUM TO

THE SEAFARERS' WAGES REGULATIONS 2024

2024 No. 1015

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Mike Kane MP, Minister for Aviation, Maritime and Security at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Mike Alcock, Deputy Director for Ports and Shipping, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Katie Parr at the Department for Transport, katie.parr@dft.gov.uk, can be contacted with any queries regarding the regulations.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations give effect to the provisions of the Seafarers' Wages Act 2023 (the Act), which provides that operators of frequent international services which call at UK ports must either provide a declaration that seafarers on these services are remunerated at a rate equivalent to the minimum wage under the National Minimum Wage Act 1998 (the National Minimum Wage) or pay a surcharge. The regulations set out the administrative detail of the regime, including how the required rate of pay, the national minimum wage equivalent rate (NMWe) is calculated and how and when harbour authorities and operators must fulfil their functions under the Act.

Where does the legislation extend to, and apply?

4.2 The extent of the regulations (that is, the jurisdiction(s) which the regulations form part of the law of) is UK-wide.

4.3 The territorial application of the regulations (that is, where the regulations produce a practical effect) is UK-wide.

5. Policy Context

What is being done and why?

5.1 The purpose of the Act is to grant protection to seafarers working on ships that regularly use UK ports, by requiring harbour authorities to request that operators of frequent services provide a declaration that the seafarers onboard are being paid at least the NMWe while in UK waters and, if such a declaration is not provided in time, to impose a surcharge on the operator each time the service enters the harbour. The

Act requires various administrative details to be set out in regulations in order for it to be effective. These regulations provide those details.

5.2 The Act, together with these regulations, provides strong incentives for operators of in-scope services to ensure that seafarers are paid the same minimum pay for core hours worked whilst in UK waters as those working on domestic services that qualify for the National Minimum Wage.

5.3 The seafarers in scope are those working on international services that call at UK ports at least 120 times in a year-long period and who do not qualify for the National Minimum Wage because they do not ordinarily work in the UK. The Act requires harbour authorities to request that operators of those services calling at least 120 times a year provide a declaration that they are paying those seafarers who are not otherwise entitled to the National Minimum Wage, at a rate at least equal to NMWe. Where an operator fails to provide a declaration, the Act requires harbour authorities to impose a surcharge on operators for port calls by the service in question. Where a surcharge is due, but not paid, the harbour authority must, subject to certain exceptions, deny ships providing the service access to the harbour.

What was the previous policy, how is this different?

5.4 Prior to the Act and these regulations being passed, seafarers who were not in scope of National Minimum Wage legislation were not entitled to any equivalent protection, even when they had close ties to the UK by virtue of working on services that regularly call at UK ports.

6. Legislative and Legal Context

How has the law changed?

6.1 The Act places a duty on harbour authorities to request declarations from the operators of services in scope of the Act confirming that they are paying seafarers working on the service at least the NMWe for the duration of the relevant year (or confirming that there are no seafarers in scope of the NMWe). If a declaration is not provided, the harbour authority must then impose a surcharge on the operator. If that surcharge is not paid, the harbour authority must then refuse access to any vessels operating that service with some exceptions, including where there are overriding safety concerns.

6.2 There are criminal offences under the Act for harbour authorities who do not fulfil their functions under the Act and for operators who provide declarations that are false and misleading or for operating a service inconsistently with a declaration.

6.3 These regulations contain the details that enable the provisions in the Act to operate. Amongst other things, the regulations cover the following matters:

- what a relevant year is;
- who a relevant harbour authority is;
- details about how declarations are to be provided;
- details about surcharges;
- how refusal of access to a port is to be communicated; and
- the rates and method of calculation of the NMWe.

Relevant year

6.4 A number of obligations in the Act apply by reference to a relevant year. This includes determining whether a service has called at UK ports at least 120 times in a relevant year and is therefore in scope of the provisions of the Act. These regulations provide that the first relevant year is the year commencing on 1 December 2024. Subsequent relevant years commence on the anniversary of that date.

Harbour authority

6.5 The Act imposes various obligations on harbour authorities. These regulations provide that if there is more than one harbour authority in respect of a harbour, the relevant harbour authority is the harbour authority which has responsibility for the berth at which the vessel operating the service docks.

Declarations

6.6 The Act places a duty on harbour authorities to request declarations from the operators of services in scope of the Act confirming that they are paying seafarers working on the service at least the NMWe for the duration of the relevant year.

6.7 The regulations specify that a harbour authority must request a declaration from the operator of a service within 28 days from the later of (i) when the harbour authority has reasonable grounds to believe that ships providing the service will enter or have entered the harbour at least 120 times in the relevant year and (ii) the 1st of January before the relevant year to which the request relates. This request must include the date.

6.8 The regulations also provide that the operator to which the request relates must provide a declaration within the period of 3 months beginning with the date of the request from the harbour authority, in the form prescribed in the regulations.

Surcharges

6.9 If a declaration is not provided, according to the Act the harbour authority must then impose a surcharge on the operator. The regulations provide details as to how the operator is to be notified of the surcharge, the amount of the surcharge and how operators can object to the surcharge.

6.10 The regulations provide that a harbour authority which imposes a surcharge must send a surcharge notification to the operator within 14 calendar days of the duty to impose the surcharge arising. They also provide that the notification must be in writing and delivered to the operator's registered office, principal place of business or another address specified by the operator.

6.11 The notification must include the amount of each surcharge, the date on which the duty to impose each surcharge arose, how payment may be made to the harbour authority, the payment deadline and the date on which the notification was sent.

6.12 The regulations also require the harbour authority to send a copy of the surcharge notification to the Secretary of State (in practice, the Maritime & Coastguard Agency) within the period of 7 calendar days of the notification. This is to allow the Secretary of State to fulfil their duty to publish all surcharges which are imposed.

6.13 The regulations also set out how the surcharge is to be calculated. The surcharge tariff is based on the gross tonnage of the ships providing the service. There are separate rates for ships with a passenger carrying capacity of 12 or fewer, and those with a

passenger carrying capacity of more than 12. These factors may be seen as a proxy for the likely number of seafarers on board and for the commercial scale of the service.

6.14 For ships which are certified to carry 12 or fewer passengers the surcharge tariff is:

- 5p per tonne up to a maximum of 50,000 tonnes;
- 1p per tonne in excess of 50,000 tonnes.

6.15 For ships which are certified to carry more than 12 passengers the surcharge tariff is:

- 10p per tonne up to a maximum of 50,000 tonnes;
- 2p per tonne in excess of 50,000 tonnes.

6.16 The regulations set out the deadline for the payment of surcharges by operators, which is 60 calendar days beginning with the day after the day when the surcharge notification was sent.

6.17 The regulations also set out the time limit for objecting to the surcharge. Objections to a surcharge can be made by an operator within 28 calendar days of the operator being notified of the surcharge, or by an interested party within 28 calendar days of it being published by the Secretary of State.

Refusal of access

6.18 The regulations set out how the harbour authority must communicate refusal of access to an operator who does not pay a surcharge imposed on it in the manner required by the harbour authority. A refusal of access notification must be sent to the operator in days 45-50 after the day on which the surcharge notification is sent. It must be sent in writing and sent to the operator's registered office, principal place of business or another address specified by the operator. If the harbour authority cannot ascertain the address of the operator after reasonable inquiry, they may hand the notification to the master of a ship operating the service.

6.19 The notification of refusal of access must include the date of notification of the surcharge which has not been paid, the amount of each surcharge which has not been paid and the date and time from which ships operating the service will be refused access.

Rates and calculation of NMWe

6.20 The regulations set out what the NMWe rates are and how to determine if a seafarer is being paid the NMWe.

6.21 The NMWe rates are the same as the UK National Minimum Wage rates. The current hourly rates are: (a) £11.44 for a seafarer who is aged 21 years or over; (b) £8.60 for a seafarer who is aged 18 years or over (but is not yet aged 21 years); (c) £6.40 for a seafarer who is aged under 18 years; (d) £6.40 for a seafarer to whom the apprenticeship rate applies.

6.22 The regulations provide that the apprenticeship rate applies to a seafarer under a contract of apprenticeship or an apprenticeship agreement. As education is devolved, there are different arrangements in England, Scotland, Wales and Northern Ireland and so the regulations refer to those particular arrangements.

6.23 A determination of whether a seafarer is being paid the NMWe is undertaken by reference to a pay reference period. In order for the operator of a relevant service to be able to make a valid declaration in response to a request by a harbour authority, any seafarer must be remunerated at a rate that is equal to or exceeds the NMWe for their

UK work in relation to the service in each pay reference period. The regulations specify that a pay reference period is either a month or, if the seafarer is paid by reference to a period shorter than a month, that period.

6.24 The regulations specify that the determination of whether a seafarer is being paid the NMWe should take account of the seafarer's basic remuneration and any UK additional remuneration. The reference to UK additional remuneration is a result of the fact that the Act only requires NMWe to be paid in UK territorial waters. It therefore allows for the possibility that a top-up may be applied to the basic rate for time spent in UK waters to bring pay to a level or above the NMWe rate.

6.25 The regulations set out what counts as payments for these purposes, as well as detailing what types of payments and benefits in kind do or do not reduce a seafarer's remuneration for the purposes of calculating NMWe. For example, if a deduction is made from a seafarer's remuneration as a result of an accidental overpayment of their wages by their employer, this is not treated as reducing their remuneration for the purposes of determining whether they are being paid the NMWe,

6.26 The details of what counts as payments and reductions is similar to the equivalent rules for the UK National Minimum Wage regime. However, one area of difference is that these regulations do not allow the cost of providing accommodation to form part of the seafarer's remuneration for the purposes of determining whether they are receiving the NMWe. This is in line with a recommendation from the Low Pay Commission that this would not be appropriate in relation to seafarers on the basis that they often do not have a choice of accommodation.

Why was this approach taken to change the law?

6.27 The policy objectives of the legislation were to ensure that the process set out was clear and set reasonable requirements for harbour authorities and operators to comply with, while ensuring that seafarers receive robust pay protection.

6.28 The approach was subject to two four-week long consultations, where we heard views from many affected stakeholders, which helped inform the final approach. The resulting policy seeks to achieve a balance between making it workable for all parties and being robust enough to ensure that seafarers are protected.

7. Consultation

Summary of consultation outcome and methodology

7.1 Two four-week long public consultations were held on the draft regulations and accompanying guidance. The first consultation dealt with the regulations relating to declarations, imposition and payment of surcharges and communication of refusal of access. Part two covered the regulations on the surcharge tariff and the NMWe rates.

7.2 During both consultations, Department for Transport officials held several workshops with operators of in-scope services, ports, trade unions and seafarer charities. During these workshops, stakeholders were given an opportunity to discuss the draft regulations and the guidance with officials and provide views.

7.3 There were 15 written responses to part one and 13 responses to part two.

7.4 As a result of the consultation, changes were made to the surcharge tariff set out in the regulations. The Government received feedback that the surcharge tariff that was consulted on was disproportionately high and that this could have a significant impact on operators of high frequency services. The Government concluded that the

surcharge could be set at a lower rate and still meet the policy objective of being an incentive to pay seafarers the NMWe rather than pay the surcharge.

7.5 The consultation also highlighted improvements that could be made to the guidance. Consultation responses especially asked for greater clarity on the services that would be in scope of the legislation, and so further case studies have been included.

7.6 The government response to the consultation is published online.[1]

8. Applicable Guidance

8.1 Guidance on the application of the Regulations and the Act has been published online.[2]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The impact of this legislation is considered in the enactment impact assessment for the Seafarers' Wages Act which is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business is that the legislation will increase costs for operators who do not already pay their seafarers at a level or above the NMWe or above to their seafarers. However, those that already pay above that level will benefit from a levelling of the playing field with their competitors. There will also be minor added demand on the resources of harbour authorities (estimated to be a total of £12,000 in the Impact Assessment) who will have to perform their duties under the Act.

9.3 It is not expected that many small or micro businesses will be impacted by the policy. The number of small businesses in scope is believed to be below 15, and no micro businesses are believed to be in scope.

9.4 If small businesses were in scope of the policy, it is expected that they would account for a disproportionately small share of the costs. Exemptions for small businesses were considered, but we concluded that on equity and efficiency grounds, this would not be justified. Seafarers should not be paid less because they work for a small business, and exempting small businesses would risk market distortion.

9.5 The impact on the public sector consists of some minor costs being incurred for compliance checks undertaken by the Maritime and Coastguard Agency, estimated to be around £350,000 in total.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 A statutory review clause is included in the regulations. There will be a Post-Implementation Review 5 years after the legislation is passed. The Department for Transport will continue to engage with stakeholders during this time to monitor the impacts of the legislation.

[1] https://www.gov.uk/government/consultations/the-seafarers-wages-act-2023-part-2-draft-regulations-and-guidance

[2] https://www.gov.uk/government/publications/complying-with-the-seafarers-wages-act-2023

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

The regulations are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").