



Department for
Business, Energy
& Industrial Strategy

GUIDE TO THE APPLICATION OF THE EQUALITY ACT 2010 AND NATIONAL MINIMUM WAGE FOR SEAFARERS

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Contents

Introduction	3
Definition of a Seafarer	3
Definition of National Minimum Wage	3
Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011	4
Differential Pay	4
Distinctions in levels of pay on-board a UK registered vessel	5
National Minimum Wage and Seafarers	6
Agency workers	7
Employment Tribunal claims	7
Excluded Persons and Excluded Work	8
How the National Minimum Wage legislation should be applied to the maritime industry	9
Enforcing payment of the national minimum wage	10

Introduction

The purpose of this guide is to outline the legal requirements of the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011, and National Minimum Wage Act 1998 in relation to seafarers. This guide contains examples of scenarios when the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 and UK minimum wage law are applicable to seafarers working on UK and non-UK registered ships.

It should be noted that all references to the EU in this document are dependent on the terms of the UK's exit from the EU. This guidance will be updated following the outcome of exit negotiations.

Definition of a Seafarer

Government guidelines published by the Maritime and Coastguard Agency¹ define a seafarer as anyone who is employed or engaged or works in any capacity on board a ship.

As well as the master and crew of a seagoing ship, this could include persons such as shop workers, resident entertainers and hairdressers who are employed by a franchise company to work on board. It may also include self-employed persons who work on board the ship on the business of the ship.

“Seafarer” does not apply to those persons whose work is not part of the routine business of the ship and whose principal place of work is ashore, for example – marine professionals such as harbour pilots, inspectors, or superintendents; scientists researchers, divers or specialist offshore technicians. “Seafarer” also does not include those who are working on a seagoing ship on an occasional and short-term basis, for example, fitters, guest lecturers and entertainers, repair technicians, surveyors or port workers.

A ship is a vessel:

- On an international voyage or from a foreign port
- On a domestic journey from the UK coast
- Of more than 500 gross tonnes

The Seafarer Statistic report, published on 25 January 2017², confirmed a total of 23,060 active UK seafarers. This figure consisted of 10,650 certified officers, 1,670 uncertified offices, 8,880 ratings and 1,860 officer cadets in training.

Definition of National Minimum Wage

In this document “National Minimum Wage” (NMW) refers to all minimum wage rates as established in the 1998 Act and related legislation. This includes age-specific rates of minimum wage – for instance the National Living Wage, which applies to workers aged 25 and over.

General information on the NMW, including a wage calculator and guidance for employers, is available on GOV.UK³.

¹ MGN 471 Maritime Labour Convention, 2006. Definitions, available at:

www.gov.uk/government/publications/mgn-471-maritime-labour-convention-2006-definitions

² www.gov.uk/government/statistics/seafarer-statistics-2016

Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011

The regulations apply Part V (Work) of the Equality Act 2010 to seafarers, protecting them against discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Seafarers who are protected include;

- all seafarers, irrespective of nationality, who work on board UK registered ships or hovercraft which operate wholly or partly in Great Britain or its internal or territorial waters;
- currently EU, EEA and designated State⁴ seafarers whose employment is located in (or closely linked to) Great Britain, working on board EEA registered ships/hovercraft operating wholly or partly in Great Britain and/or its internal or territorial waters (**except** in relation to the protected characteristic of marriage and civil partnership); and
- currently EU, EEA and designated State seafarers whose employment is located in (or closely linked to) Great Britain, working on board UK registered ships and/or hovercraft operating wholly outside of Great Britain and/or its internal or territorial waters.

Differential Pay

Currently, under the Equality Act 2010 as applied by the Regulations, an employer or principal can either pay or offer to pay a person (A) at a lower rate than the employer or principal pays or offers to pay another person (B) because A is of a different nationality from B, if;

Person (A) either:

- applied for work as a seafarer outside Great Britain, or
- was recruited as a seafarer outside Great Britain,

and is not;

- British Citizen,
- a national of another EEA State, or
- a national of a designated state.

³ www.gov.uk/national-minimum-wage/what-is-the-minimum-wage

⁴ "Designated state" means the countries of the African, Caribbean and Pacific Group of States, the Kingdom of Morocco, Montenegro, the Most Serene Republic of San Marino, the People's Democratic Republic of Algeria, the Principality of Andorra, the Republic of Albania, the Republic of Croatia, the Republic of Macedonia, the Republic of Tunisia, the Republic of Turkey, the Russian Federation or the Swiss Confederation.

Distinctions in levels of pay on-board a UK registered vessel

Worker A – EEA or designated state Seafarer

Worker B – Non-EEA or non-designated state Seafarer recruited in Great Britain

Worker C – Non-EEA or non-designated state Seafarer recruited outside Great Britain

Worker B (as recruited in the UK) must be paid the same wage rate as **Worker A** (they cannot be paid less nor can they be paid more for the same work)

However, **Worker C** can be paid less than **Worker A** and **Worker B** as they were recruited from outside of Great Britain⁵

The UK's application of these Regulations to EEA registered vessels is currently necessary to ensure the UK complies with European law.

Separate, but similar, legislation applies in Northern Ireland.

⁵ Providing National Minimum Wage requirements are met if they apply.

National Minimum Wage and Seafarers

Most workers in the United Kingdom over compulsory school age are entitled to be paid at least national minimum wage rates. A worker is defined in the National Minimum Wage Act 1998, section 54(3)⁶ as someone who has entered into or works or worked under;

- A contract of employment or
- A contract by which the individual undertakes to perform work or services personally for someone else. The contract can be express (whether agreed orally or in writing) or implied⁷.

Under the Maritime Labour Convention, an employer is required to have a Seafarers Employment Agreement⁸ with every individual seafarer working on their vessel. However, the international nature of the maritime industry can often make the position of the national minimum wage complex in terms of entitlement, jurisdiction and enforcement.

Section 1 of the 1998 Act applies the NMW to the work of someone who 'is working, or ordinarily works' in the UK. Section 40 states that a worker is to be treated as ordinarily working in the UK if he or she works on a UK flagged ship, unless either their employment is wholly outside the UK or they are not ordinarily resident in the UK.

The effect of these provisions is that the UK NMW applies to the work of someone who is:

Working in the UK

Section 1(2)(b) of the National Minimum Wage Act 1998

- All seafarers working on ships within the UK internal waters and ports are entitled to be paid at least the NMW.⁹
- This is regardless of where the ship is registered, or where the worker ordinarily works or resides.

Or

Working outside the UK on a UK flagged ship

Section 40¹⁰ of the National Minimum Wage Act 1998

Seafarers on a UK flagged ship will be entitled to the NMW for work performed outside the UK if they ordinarily work in the UK. Seafarers working on a UK flagged ship are treated as ordinarily working in the UK if:

- they are ordinarily resident in the United Kingdom; or
- at least some of their employment is in the United Kingdom.

⁶ www.legislation.gov.uk/ukpga/1998/39/section/54

⁷ However the definition of a worker excludes an individual carrying on a profession or business who performs work or services for a client/customer.

⁸ www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm

⁹ The National Minimum Wage (Offshore Employment) Order 1999 applies the 1998 Act to offshore employment in the territorial waters of the UK and the UK sector of the continental shelf. But this is generally not relevant to seafarers because the Order does not apply to employment in connection with a ship which is in the course of navigation or engaged in dredging or fishing. See www.legislation.gov.uk/uksi/1999/1128/article/2/made

¹⁰ www.legislation.gov.uk/ukpga/1998/39/section/40

Or

**Working outside the UK on a non-UK flagged ship
Section 1(2)(b¹¹) of the National Minimum Wage Act 1998**

Seafarers on a non-UK flagged ship will be entitled to the NMW for work performed outside the UK if they “ordinarily work” in the UK.

It will be necessary to consider the circumstances of the employment to ascertain whether the seafarer has a sufficiently strong connection to the UK. Criteria considered when deciding whether someone ordinarily works in the UK might include:

- where the seafarer’s tour of duty begins and ends;
- where the seafarer is subject to income tax and National Insurance Contributions;
- the currency that the seafarer is paid in.

If a worker or employer has further queries about any element of the National Minimum Wage, or application of the Equality Act to seafarers, they can contact the ACAS Helpline for workplace advice, free on 0300 123 1100 for more information and guidance. HMRC investigates every worker complaint made to the ACAS helpline, and also conducts risk-based enforcement in sectors or areas where there is a higher risk of workers not getting paid the legal minimum wage.

Agency workers

Section 34 of the National Minimum Wage Act 1998 makes provision for agency workers to be entitled to the NMW where they would not otherwise be defined as a “worker”.

Employment Tribunal claims

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out when claims may be presented to Employment Tribunals (including for NMW complaints).

Paragraphs 8(2) and (3) of Schedule 1 to the ET Regulations states:

A claim may be presented in an employment tribunal in England, Wales or Scotland if—

- (a) the respondent, or one of the respondents, resides or carries on business in England, Wales or Scotland;
- (b) one or more of the acts or omissions complained of took place in England, Wales or Scotland;
- (c) the claim relates to a contract under which the work is or has been performed partly in England, Wales or Scotland; or
- (d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England, Wales or Scotland.

¹¹ www.legislation.gov.uk/ukpga/1998/39/section/1

This includes claims related to the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 and the National Minimum Wage Act 1998.

Excluded Persons and Excluded Work

The NMW does not apply to excluded persons as set out in Sections 43-45B of the NMW Act 1998¹². These sections apply to, for instance, voluntary workers employed by a registered charity, but there is also a specific exemption for **share fishermen**. This covers a person who is employed as master or as a member of the crew of a fishing vessel, and is paid for their employment only by a share in the profits or gross earnings of the vessel.

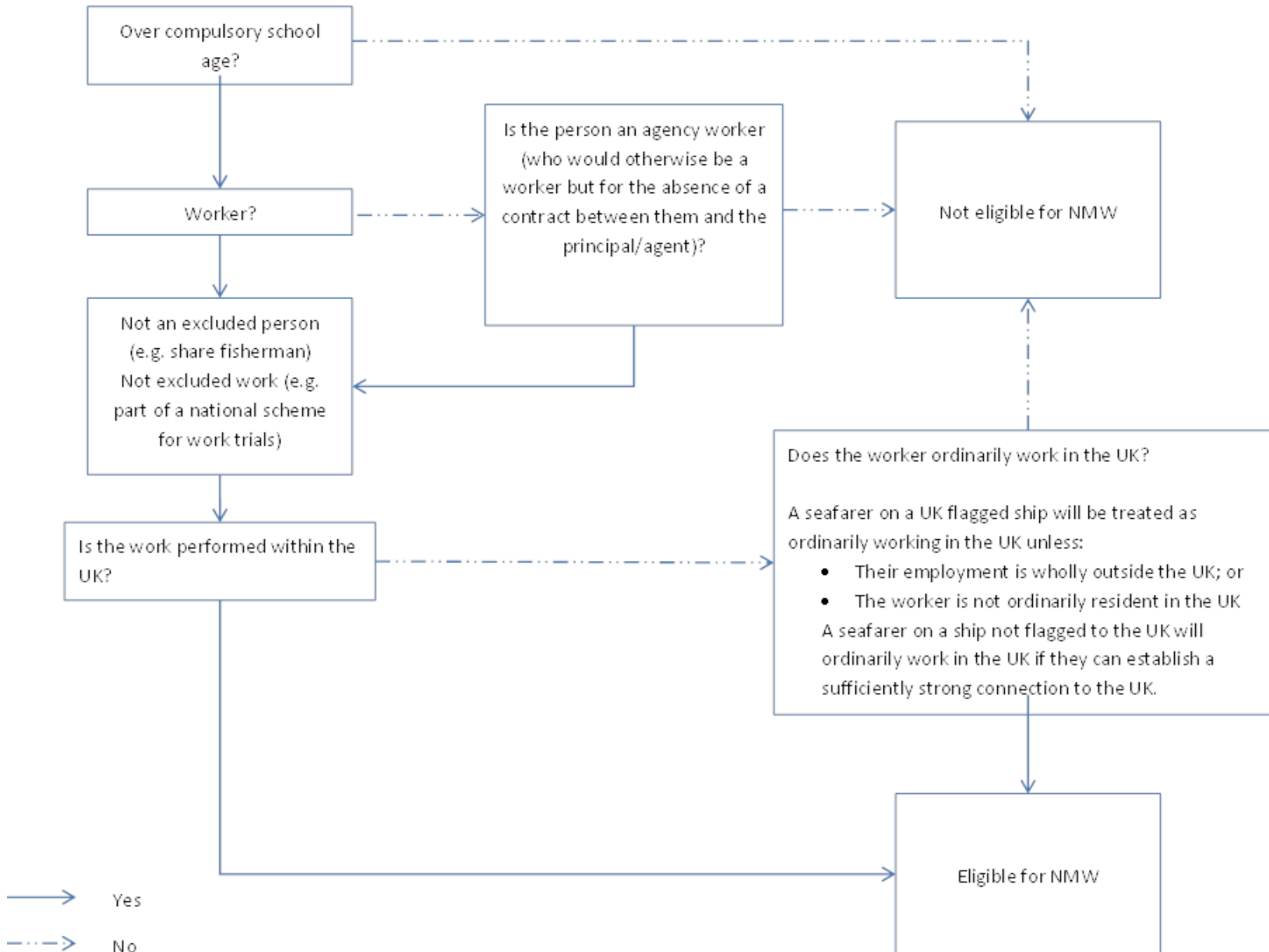
The NMW also does not apply to work which is excluded, as set out under Part 6 of the National Minimum Wage Regulations 2015¹³. These exclusions include:

- Schemes for trial periods of work – where funded by national skills funding agencies or other UK national authorities (e.g. provision under the Jobseekers Act 1995);
- Work experience as part of a higher or further education course;
- Traineeships in England;
- European Union programmes (e.g. the Erasmus+ Programme);
- Work relating to family households or family businesses.

¹² www.legislation.gov.uk/ukpga/1998/39/crossheading/exclusions

¹³ www.legislation.gov.uk/uksi/2015/621/part/6/made

How the National Minimum Wage legislation should be applied to the maritime industry



Example

A seafarer is employed on a ferry company operating between Port A in Great Britain and Port B in Spain.

- The worker is over compulsory school age.
- The worker meets the criteria to be classed as a worker under the NMW legislation¹⁴.
- The worker is not excluded under ss. 43-45B of the NMW Act¹⁵, or exempt under Part 6 of the NMW Regulations 2015¹⁶.
- The ship that the worker is working on is flagged to the UK.
- Some of the employment is performed within the UK.
- The worker is ordinarily a resident of the UK.
- The worker will be classed as 'ordinarily working' in the UK and is entitled to NMW for all work performed.

Enforcing payment of the national minimum wage

The Government is committed to increasing compliance with minimum wage legislation and effective enforcement of it. Everyone who is entitled to the minimum wage should receive it.

Where workers are not paid at least NMW they can seek to enforce their entitlement through an Employment Tribunal or the County Court. Alternatively, HM Revenue & Customs (HMRC) enforces the UK NMW and they can investigate employers and respond to complaints from workers.¹⁷

A seafarer who has a question about the National Minimum Wage or believes they may not have received what they are legally entitled to can call the ACAS Workplace Advice Helpline (0300 123 1100). This is a free and confidential number, through which workers can also make direct complaints of non-payment of the NMW. Third party complaints can also be submitted via the ACAS Helpline.

Every complaint made is considered by HMRC for investigation. Once further information has been obtained from the complainant, if it looks like NMW has not been paid, HMRC will investigate the employer and enforce payment of NMW on the worker's behalf.

Where HMRC finds that an employer has not paid NMW, the employer may be required to pay a higher amount to the worker based on the current rate, plus a penalty to the UK Government. The employer may also be considered for public naming and shaming for not complying with NMW.

¹⁴ www.gov.uk/national-minimum-wage/who-gets-the-minimum-wage

¹⁵ www.legislation.gov.uk/ukpga/1998/39/crossheading/exclusions

¹⁶ www.legislation.gov.uk/uksi/2015/621/part/6/made

¹⁷ HMRC policy on NMW enforcement: www.gov.uk/government/publications/enforcing-national-minimum-wage-law



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