

2024 No.

MERCHANT SHIPPING

TERMS AND CONDITIONS OF EMPLOYMENT

HARBOURS, DOCKS, PIERS AND FERRIES

The Seafarers' Wages Regulations 2024

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>		***

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 3(2), (5) and (6)(a), 9(4) and (5), 10(4), 11(7), 17(2) and 18(3) of the Seafarers' Wages Act 2023(a):

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Seafarers' Wages Regulations 2024 and come into force on [*****].

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

“the Act” means the Seafarers' Wages Act 2023(b);

“refusal of access notification” means a communication from a harbour authority(c) to an operator(d) containing the information in regulation [11(7)] (notification of refusal of access);

“relevant service” means a service to which the Act applies;

“surcharge notification” means a communication from a harbour authority to an operator containing the information required by regulation [6(5)] (notification of the imposition of a surcharge).

(a) 2023 c. 8.

(b) 2023 c. 8.

(c) See section 18(1) of the Act for the meanings of “harbour” and “harbour authority”. In relation to England, Wales and Scotland, these terms have the same meanings as in the Harbours Act 1964 (c. 40). In relation to Northern Ireland, these terms have the same meanings as in the Harbours Act (Northern Ireland) 1970 (c. 1).

(d) See section 19 of the Act for the meaning of “operator”.

Relevant year

3. The first relevant year begins on 1st [June] 2024(a).

Harbour and harbour authority

4.—(1) Where there is more than one harbour authority in respect of a harbour, the harbour authority in respect of the harbour for the purposes of these Regulations is the harbour authority responsible for the berth at which ships(b) providing the relevant service dock.

(2) In this regulation “berth” means any berth, dock, wharf, quay, pier, jetty or similar structure at which sea-going ships can ship or unship goods or embark or disembark passengers.

Declarations

5.—(1) A harbour authority which is required to request an equivalence declaration(c) must do so within the period of 28 days beginning with the day in paragraph (2).

(2) The day is whichever is the later of—

(a) the day on which the harbour authority has reasonable grounds to believe that ships providing a service to which the Act applies will enter, or have entered, its harbour on at least 120 occasions during a relevant year;

(b) the [1st January] before the relevant year to which the request relates.

(3) A request for an equivalence declaration must be dated.

(4) An operator providing a declaration in response to a request by a harbour authority to provide an equivalence declaration must provide that declaration—

(a) within the period of three months beginning with the date of the request from the harbour authority,

(b) in the form prescribed in [Schedule 1], and

(c) in the manner specified by the harbour authority.

Notification of the imposition of a surcharge

6.—(1) A harbour authority which imposes a surcharge(d) must send a surcharge notification to the operator of the service within the period of 14 days beginning with the day on which the duty to impose the surcharge arises.

(2) A surcharge notification must be in writing and may be given—

(a) by delivering or sending it to or leaving it at the operator’s—

(i) registered office,

(ii) principal place of business, or

(iii) another address specified by the operator as their address for service, or

(b) where paragraph ([3]) applies, by sending the surcharge notification to the operator using email.

(3) This paragraph applies where an operator has notified the harbour authority of an email address at which the operator will accept notifications under these Regulations.

(4) Where a surcharge notification is to be given to an operator whose address cannot be ascertained after reasonable inquiry it may be given by handing it to the master of a ship operating the service.

(a) “Relevant year” is defined in section 3(6) of the Act as being the period of 12 months beginning with a date specified in regulations and each successive period of 12 months.

(b) See section 1(4) of the Act for the meaning of “ship”.

(c) See section 3(2) of the Act for the meaning of “equivalence declaration”.

(d) See section 9 of the Act for the meaning of “surcharge”.

- (5) A surcharge notification must be dated and include—
- (a) the amount of each surcharge to which the notification relates,
 - (b) the date to which each surcharge relates,
 - (c) how payment may be made to the harbour authority, and
 - (d) the payment deadline.

(6) The harbour authority must send a copy of the surcharge notification to the Secretary of State within the period of 7 days beginning with the day on which the surcharge notification is sent to the operator.

(7) The copy of the surcharge notification must be sent to the Secretary of State by e-mail, to the email address specified for that purpose on the gov.uk website.

(8) In this regulation “payment deadline” means the last day within the period specified in regulation [7] (period for payment of surcharges).

Period for payment of surcharges

7. An operator must pay the surcharges to which the surcharge notification relates within the period of 60 days beginning with the day after the day on which the surcharge notification was sent.

Publication of surcharges

8.—(1) The Secretary of State must publish on the gov.uk website the information in paragraph ([2]).

(2) For each surcharge which is notified to the Secretary of State the information is—

- (a) the amount of the surcharge,
- (b) the date to which each surcharge relates,
- (c) the harbour authority which imposed the surcharge, and
- (d) the operator of the service on which it was imposed.

(3) The information must be published within a reasonable time after it is notified to the Secretary of State.

Time limit for objections to surcharges

9.—(1) An objection by an operator to a surcharge imposed on it must be received by the Secretary of State within the period of 28 days beginning with the day on which the operator receives the surcharge notification.

(2) Paragraph ([3]) applies to an objection to a surcharge by an interested party other than the operator on whom the surcharge is imposed.

(3) An objection under this paragraph must be received by the Secretary of State within the period of 28 days beginning with the day on which information about the surcharge is published by the Secretary of State pursuant to regulation [8] (publication of surcharges).

(4) The Secretary of State may extend the time limits in this regulation if satisfied that there are good reasons for doing so.

Notification of non-payment of surcharge to the Secretary of State

10.—(1) Paragraph ([2]) applies where—

- (a) a surcharge has been imposed by a harbour authority,
- (b) a surcharge notification relating to the surcharge has been sent to the operator of the service, and

- (c) the surcharge has not been paid in the manner required by the surcharge notification pursuant to regulation [6(5)(c)] (notification of the imposition of a surcharge).
- (2) The harbour authority must send a notification containing the information in paragraph ([4]) to the Secretary of State within the period of 5 days beginning with the day 50 days after the day on which the surcharge notification was sent.
- (3) A notification under this regulation must be sent by email, to the email address specified for that purpose on the gov.uk website.
- (4) A notification must include—
 - (a) the name of the operator to whom the surcharge notification has been sent;
 - (b) the date and time from which ships providing the service to which the surcharge relates will be refused access to the harbour until the surcharge is paid.

Notification of refusal of access

- 11.—(1) Paragraph ([2]) applies where—
- (a) a surcharge has been imposed by a harbour authority,
 - (b) a surcharge notification relating to the surcharge has been sent to the operator of the service, and
 - (c) the surcharge has not been paid in the manner required by the surcharge notification pursuant to regulation [6(5)(c)] (notification of the imposition of a surcharge).
- (2) The harbour authority must send a refusal of access notification to the operator within the period of 5 days beginning with the day 45 days after the day on which the surcharge notification was sent.
- (3) A refusal of access notification must be in writing and may be given—
- (a) by delivering or sending it to or leaving it at the operator’s—
 - (i) registered office,
 - (ii) principal place of business, or
 - (iii) another address specified by the operator as their address for service, or
 - (b) where paragraph ([4]) applies, by sending the refusal of access notification to the operator using email.
- (4) This paragraph applies where an operator has notified the harbour authority of an email address at which the operator will accept notifications under these Regulations.
- (5) Where a refusal of access notification is to be given to an operator whose address cannot be ascertained after reasonable inquiry it may be given by handing it to the master of a ship operating the service.
- (6) A refusal of access notification must include—
- (a) the date of the relevant surcharge notification,
 - (b) the amount of each surcharge in the relevant surcharge notification which has not been paid, and
 - (c) the date and time from which ships providing the service to which the surcharges relate will be refused access to the harbour until the surcharges are paid.
- (7) In this regulation “relevant surcharge notification” means the surcharge notification referred to in paragraph [(1)(b)].

SCHEDULE 1

Ref [xxx]

National Minimum Wage Equivalence Declaration Form

Form [***]

National Minimum Wage Equivalence Declaration

Name and address of operator:

Description of service (“the service”):

Place in the United Kingdom that the service calls at:

Place outside of the United Kingdom that the service calls at:

A declaration is to be made pursuant to one only of section 4(2) OR section 4(3) OR section 4(4) OR section 4(5) of the Seafarers’ Wages Act 2023 (“the Act”).

Section 4(2) Declaration

Period to which this declaration applies:

[1 June] 20__ to [31 May] 20__

Please tick the statement which applies:

On behalf of the operator of the service, I declare that during the period to which this declaration applies all non-qualifying seafarers, as defined in the Act, who will work on ships which will provide the service will be paid, in respect of their UK work in relation to the service, a rate equivalent to the UK national minimum wage in accordance with the Seafarers’ Wages Regulations 2024.

On behalf of the operator of the service, I declare that during the period to which this declaration applies, there will be no non-qualifying seafarers, as defined in the Act, working on ships providing the service.

Section 4(3) Declaration

Period to which this declaration applies:

_____ 20__ to [31 May] 20__

Please tick the statement which applies:

On behalf of the operator of the service, I declare that during the period to which this declaration applies all non-qualifying seafarers, as defined in the Act, working on ships providing the service will be paid, in respect of their UK work in relation to the service, a rate equivalent to the UK national minimum wage in accordance with the Seafarers' Wages Regulations 2024.

On behalf of the operator of the service, I declare that during the period to which this declaration applies, there will be no non-qualifying seafarers, as defined in the Act 2023, working on ships providing the service.

Section 4(4) Declaration

Period to which this part of this declaration applies:

[1 June] 20__ to __ 20__

Please tick the statement which applies:

On behalf of the operator of the service, I declare that during the period to which this part of this declaration applies all non-qualifying seafarers, as defined in the Act, who worked on ships which provided the service were paid, in respect of their UK work in relation to the service, a rate equivalent to the UK national minimum wage in accordance with the Seafarers' Wages Regulations 2024.

On behalf of the operator of the service, I declare that during the period to which this part of this declaration applies, there were no non-qualifying seafarers, as defined in the Seafarers' Wages Act 2023, working on ships which provided the service

and

Period to which this part of this declaration applies:

__ 20__ to [31 May] 20__

Please tick the statement which applies:

On behalf of the operator of the service, I declare that during the period to which this declaration applies all non-qualifying seafarers, as defined in the Act, working on ships providing the service will be paid, in respect of their UK work in relation to the service, a rate equivalent to the UK national minimum wage in accordance with the Seafarers' Wages Regulations 2024.

On behalf of the operator of the service, I declare that during the period to which this declaration applies, there will be no non-qualifying seafarers, as defined in the Act, working on ships providing the service.

Section 4(5) Declaration

Period to which this declaration applies:

[1 June] 20__ to [31 May] 20__

Please tick the statement which applies:

On behalf of the operator of the service, I declare that during the period to which this declaration applies all non-qualifying seafarers, as defined in the Act, who worked on ships which provided the service were paid, in respect of their UK work in relation to the service, a rate equivalent to the UK national minimum wage in accordance with the Seafarers' Wages Regulations 2024.

On behalf of the operator of the service, I declare that during the period to which this declaration applies, there were no non-qualifying seafarers, as defined in the Act, working on ships which provided the service.

Note that, pursuant to section 5 of the Seafarers' Wages Act 2023, it may be a criminal offence to operate the service inconsistently with this declaration. It may also be a criminal offence to provide a false or misleading declaration in so far as it concerns the operation of the service before the declaration was provided.

Name of person making this declaration on behalf of the operator, and capacity in which they are making this declaration:

Signature:

Date:

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations implement the Seafarers' Wages Act 2023 (c. 8) ("the Act") which makes provision in relation to the remuneration of seafarers who do not qualify for the national minimum wage.

The Act requires harbour authorities to ask the operator of a service which enters a UK harbour 120 times or more in a relevant year for a national minimum wage equivalence declaration ("declaration"). The declaration is that seafarers on the service who do not qualify for the UK national minimum wage ("NMW") are being paid at least an equivalent rate to the NMW while working in the UK or its territorial waters. The Act requires that harbour authorities must impose surcharges when operators fail to provide a declaration or where they operate a service inconsistently with a declaration. Subject to certain exceptions, the Act requires harbour authorities to refuse ships providing a service access to their harbour if they impose a surcharge and it is not paid.

Regulation [3] provides the date on which the relevant year begins.

Regulation [5] sets out the period within which harbour authorities must request, and operators provide, declarations, and other procedural requirements for declarations.

Regulation [6] makes provision as to the period within which harbour authorities must notify operators about surcharges which have been imposed and the manner and form of that notification.

The Regulations require harbour authorities to provide copies of notifications of surcharges to the Secretary of State and regulation [8] requires the Secretary of State to publish information on surcharges which have been imposed. Regulation [7] provides for the period within which surcharges must be paid and regulation [9] sets out the time limits for making objections to surcharges to the Secretary of State.

Where a surcharge is not paid harbour authorities must inform the Secretary of State (regulation [10]) and regulation [11] makes provision for the communication of refusal of access.