

Guidance on the Seafarers' Wages Regulations



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Chapter 1: Introduction

Whom is this guidance for?

1. The purpose of this guidance is to assist harbour authorities and operators of services in scope of the Seafarers' Wages Act 2023 ("the Act") to comply with their duties under that Act and the Seafarers' Wages Regulations 2024 ("the Regulations"). It also sets out the enforcement powers to be used by the Maritime and Coastguard Agency (MCA) and may assist unions and seafarers to understand how the Act and Regulations will apply to the payment of wages.

[Note: This draft guidance document currently only covers procedural matters as we are consulting on the draft Regulations in two phases, but it is intended a single guidance document will cover all aspects of the Act and implementing Regulations]

Overview of the Seafarers' Wages Act 2023

1.1 The objective of the Act is to protect and improve remuneration for seafarers with close ties to the UK. It makes access to UK harbours for international services calling regularly at the UK conditional on payment of the National Minimum Wage ("NMW") equivalent or a surcharge.

Chapter 2: To whom does the Act apply?

2. The Act requires a harbour authority to ask the operator of a service which enters its harbour 120 times or more in a year for a declaration. The declaration is that seafarers on the service who do not qualify for the NMW are being paid at least an equivalent rate to the NMW while they are working in UK territorial waters.

What is a service?

- 2.1 The Act applies to 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 therefore does not apply to domestic services. The Act does not apply to a service that is for the purpose of leisure or recreation nor to a service provided by a fishing vessel.
- 2.2 The requirement for harbour authorities to request a declaration where a service enters a UK harbour at least 120 times in a relevant year, is based on a total number of calls per service, rather than per ship. Multiple ships can be operating the same service. If an operator has more than one ship operating on the same route, this could constitute a single service, and every call made to the UK harbour by any ship operating that service would count towards the 120 times a year.
- 2.3 What constitutes a service will be a question of fact and degree. Examples below are illustrative but not exhaustive.

Examples

- 2.4 **Example 1:** Operator A has two cargo/passenger (ro-pax) ferries operating between Dover and Calais, each making 70 calls at Dover in a relevant year. This would be a single service as it is the same operator offering the same type of service on the same route.
- 2.5 **Example 2:** Operator B has one ro-pax ferry operating the Dover/Calais route and another ro-pax ferry operating between Dover and Dutch harbour Z, each making 100 calls at Dover a year. These would be two different services, as they are calling at different places outside of the UK.
- 2.6 **Example 3:** Operator C and Operator D are completely separate companies with different brand identities. Both operate ro-pax ferries between Hull and Rotterdam. Operator C has one ship which calls at Hull 100 times a year and Operator D has one ship which calls at Hull 150 times a year. The harbour authority would not need to request a declaration from Operator C as it calls at the harbour fewer than 120 times a year and is a distinct service from that run by Operator D. The harbour

- authority would be required to request a declaration from Operator D as the service calls at the harbour over 120 times a year.
- 2.7 **Example 4**: Operator E operates a ro-pax ferry between Dover and Calais which calls at Dover 120 times a year. Operator E also operates a lift-on lift off container ship which does not carry any passengers. The container ship calls at Dover 80 times a year. The two ships are providing separate services. The harbour authority must request a declaration for the passenger service as it calls at the harbour at least 120 times in the relevant year, but not for the container service as it is below the 120 call threshold.
- 2.8 **Example 5**: Operator F operates ro-pax ferries between Dover and Calais. It has two ships operating on this route. Ship A calls at Dover 100 times a year and Ship B also calls at Dover 100 times a year. Ship A has a bar whereas Ship B does not. Both ships are providing the same service as they are operating the same route for the same purpose, even if they have slightly different facilities on board.

What is an operator?

- 2.9 The operator is the person (an individual or a company) who has, or has agreed to take over, the duties and responsibilities imposed on shipowners under the Maritime Labour Convention ("MLC") in respect of any ship providing the service.
- 2.10 Where a harbour authority is required to communicate with the operator for the purposes of the Act, it is their responsibility to ascertain who the operator is under this definition. If they are uncertain, they should communicate with their customers to determine this. In most cases, the MLC shipowner will be the same as the owner of the ship. In some cases, it could be the manager, agent or charter who has assumed the responsibility for the operation of the ship from the owner.

What is a harbour authority?

- 2.11 For the purposes of the Act, harbour authority has the meaning given in section 57 of the Harbours Act 1964 ('the 1964 Act') for harbour authorities in England, Wales and Scotland, and in section 38 of the Harbours Act (Northern Ireland) 1970 ('the 1970 Act') for harbour authorities in Northern Ireland.
- 2.12 This means a statutory body created either by local Act of Parliament, or by an Order made under the 1964 or 1970 Act.

What is a non-qualifying seafarer?

- 2.13 For the purposes of the Act, a non-qualifying seafarer means a person:
- who works on a ship providing a service to which the Act applies;
- whose work on that ship is carried out in relation to the provision of the service; and

- who doesn't qualify for the NMW in respect of that work merely because, for the purposes of the National Minimum Wage Act 1998 ("the 1998 Act"), the person does not work, or does not ordinarily work, in the United Kingdom.
- 2.14 Eligibility for NMW is set out in the 1998 Act.
- 2.15 NMW is a legally defined term under the 1998 Act and the Seafarers' Wages Act and Regulations do not amend the 1998 Act to extend legal entitlement of NMW to seafarers not otherwise entitled.



Chapter 3: National minimum wage equivalence declarations

What is an equivalence declaration?

- 3. An equivalence declaration is a declaration to the effect that in the relevant year either:
- there are no non-qualifying seafarers working on ships providing the service; or
- non-qualifying seafarers are paid a rate that is at least the NMW equivalent in respect
 of work carried out in relation to the service in UK territorial waters.

[NMW equivalent is an hourly rate specified in the Regulations on which further detail will be provided in part 2 of the consultation]

What period does an equivalence declaration cover?

- 3.1 An equivalence declaration applies to a relevant year. The first relevant year is the period of 12 months beginning on [1 June 2024 TBC] and then each successive period of 12 months will be a new relevant year.
- 3.2 A declaration can cover the whole year, or what remains of the relevant year if provided after the year has started.

How should an equivalence declaration be requested?

- 3.3 A harbour authority should contact the operator through their usual communication channels with it as a customer, requesting that it provide a declaration in the form provided in Schedule 1.
- 3.4 Requests must be dated.

When a harbour authority must request a declaration

3.5 Where a 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 it must request an equivalence declaration from the operator of the service.

- 3.6 The equivalence declaration must be requested within 28 days of whichever of the following is later:
- the harbour authority having reasonable grounds to believe that ships providing the service will call or have called at its harbour at least 120 times in a relevant year. For example, if the harbour authority is notified of the service's schedule on 1 September, they will have to request a declaration by 28 September;
- the 1 January before the relevant year to which the request relates (ie 28 January).
 The harbour authority must have still have reasonable grounds at that date. If
 circumstances change between the date the harbour authority originally had
 reasonable ground and 1 January before the relevant year, they would no longer be
 required to request a declaration.
- 3.7 If a harbour authority requested an equivalence declaration but later received information that meant it no longer had reasonable grounds to believe that ships providing the service will call at its harbour on at least 120 occasions, the request could be rescinded. For example, if ships providing a service had called at a harbour at least 120 times in previous years, and the harbour authority had no reason to believe that would change for the coming relevant year, the authority would likely have reasonable grounds to believe that ships providing the service will call at its harbour on at least 120 occasions in the coming year and be required to request a declaration. If the operator of the service then communicated that the service was changing its schedule and ships providing the service were no longer going to call at the harbour at least 120 times in the upcoming relevant year, and the harbour authority was satisfied that this was indeed the case, then the request could be rescinded.
- 3.8 Harbour authorities might avoid situations whereby they need to rescind declarations by communicating with operators before they make a formal request for an equivalence declaration.

How should an equivalence declaration be provided?

- 3.9 The equivalence declaration must be provided to the harbour authority by the operator:
- within a period of three calendar months starting on the date of the request from the harbour authority;
- in writing;
- in the form contained in Schedule [X] of the Regulations which is reproduced at [page 29] of this guidance;
- in the manner specified by the harbour authority, for example a harbour authority has flexibility to specify that they receive it via email, as part of an online vessel notification system etc. This is to provide flexibility for harbour authorities.

3.10 Equivalence declarations can be provided to harbour authorities before, during or after a relevant year:

Before the relevant year (section 4(2) of the Act):

3.11 Where a harbour authority requests and an operator provides an equivalence declaration before the relevant year begins, the declaration will be to the effect that in the relevant year non-qualifying seafarers working on ships providing the service will be paid at least the NMW equivalent or that there will be no non-qualifying seafarers working on ships providing the service.

During the relevant year (section 4(3) or 4(4) of the Act):

- 3.12 Where a harbour authority requests a declaration shortly before or during the relevant year, and the operator provides the declaration during the relevant year, the declaration will be to the effect that either:
- in what remains of the relevant year non-qualifying seafarers working on ships providing the service will be paid at least the NMW equivalent or that there will be no non-qualifying seafarers working on ships providing the service (section 4(3)), or
- in so much of the relevant year as has already passed non-qualifying seafarers working on ships providing the service have been paid at least the NMW equivalent or that there were no non-qualifying seafarers working on ships providing the service, and in what remains of the relevant year non-qualifying seafarers working on ships providing the service will be paid at least the NMW equivalent or that there will be no non-qualifying seafarers working on ships providing the service (section 4(4)).

After the relevant year (section 4(5) of the Act):

- 3.13 Where a harbour authority requests a declaration shortly before the end of, or after the relevant year, and the operator provides the declaration after the end of the relevant year, the declaration will be to the effect that in the relevant year non-qualifying seafarers working on ships providing the service have been paid at least the NMW equivalent or that there were no non-qualifying seafarers working on ships providing the service
- 3.14 Below are examples when a harbour authority might have reasonable grounds to believe that ships providing a service will call at its harbour at least 120 times in a relevant year. These examples are intended to be illustrative only and each service will need to be considered on its individual facts.

Examples

3.15 Example 1:

Operator A has been running a ferry service (Service A) from UK Harbour X to
French Harbour Y, and ships providing the service have called at UK Harbour X 160
times a year for the past 5 relevant years. There are 4 ships operating this service,

- each calling at UK Harbour X 40 times a year. There are no indications from Operator A that it intends to do anything different in the next relevant year.
- The harbour authority for Harbour X has reasonable grounds to believe ships providing the service will call at its harbour on at least 120 occasions in the coming relevant year because it has met this threshold in previous years, and there is no indication that circumstances will change in the upcoming relevant year. The harbour authority must request an equivalence declaration within 28 days of whichever is later of it having reasonable grounds to believe that ships providing the service will call at its harbour on at least 120 occasions in the coming relevant year, or the [1 January] before the beginning of the relevant year.

3.16 Example 2:

- Operator B has been running a ferry service (Service B) from UK Harbour X to French Harbour Y, and ships providing the service have called at UK Harbour X 100 times a year for the past 5 years. At the beginning of the relevant year there is no indication from Operator B that they intend to make any changes to the service, however during the relevant year, it announces that it is increasing the frequency of its service to add an additional 30 crossings per year from Harbour X to Harbour Y. This means that during the relevant year ships providing the service will have called at Harbour X 130 times.
- From the date that the harbour authority becomes aware of the change of schedule, it would have reasonable grounds to believe that ships providing the service will call at its harbour at least 120 times before the end of the relevant year and so it must request an equivalence declaration within 28 days of becoming aware.

3.17 Example 3:

- Service C usually runs 115 times a year from UK Harbour X to French Harbour Y. At the beginning of the relevant year, the harbour authority had no reason to believe that this would change. There are no communications from the operator throughout the year to suggest that it will change its schedule.
- In the last 3 weeks of the year, the operator changes its schedule to include an extra 5 calls at UK Harbour X, meaning that by the end of the year the service will have called 120 times.
- The harbour authority therefore has reasonable grounds and must request an
 equivalence declaration within 28 days. In this scenario the request for a declaration
 might be made after the end of the relevant year.

Penalties

3.18 If a harbour authority which has reasonable grounds to believe that ships providing a service to which the Act applies will call at its harbour on at least 120 occasions during a relevant year but does not request an equivalence declaration from the operator of the service, it will be committing an offence. This offence is punishable on

- summary conviction to a fine in England and Wales and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.
- 3.19 There is also an offence in the Act for operators who act inconsistently with a declaration, or provide a declaration that is false or misleading. This offence is punishable on a summary conviction to a fine in England and Wales and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Examples

- 3.20 An operator would be acting inconsistently with a declaration if, for example, they provided a declaration saying that they are paying NMWe to seafarers on board and it was found that during that relevant year, they were paying seafarers less than this.
- 3.21 An operator would have provided a declaration that is false or misleading if they provided a declaration at the end of the relevant year stating that during that year they had paid seafarers NMWe and it was found that they had been paying seafarers on the service less than NMWe.



Chapter 4: Surcharges

What is a surcharge?

- 4. A surcharge is a charge imposed on the operator of a service in respect of each occasion when a ship providing the service enters the harbour. The surcharge is an important element of the compliance process to incentivise the operators of in-scope services to pay seafarers the NMW equivalent whilst in UK territorial waters.
- 5. Non-payment of the surcharge will result in refusal of access of ships operating the service to the harbour. See Chapter 5.
- 5.1 There are four circumstances in which a harbour authority must impose a surcharge:
- 5.2 **Scenario 1:** If a harbour authority requests an equivalence declaration from an operator and it is not provided in the prescribed form and manner before the end of the prescribed period (as set out in paragraph [3.16] above), the harbour authority must impose a surcharge on the operator.

Example of scenario 1:

- Service E is a new service which will run from UK Harbour X to French Harbour Y 160 times a year. There are 4 vessels operating this service, each calling at the harbour 40 times a year.
- The harbour authority has reasonable grounds to believe the service will call at the harbour on at least 120 occasions in the relevant year and requests an equivalence declaration in respect of the relevant year 1 June 2024-31 May 2025. The deadline for the operator to provide the equivalence declaration is 1 September 2024.
- The operator does not provide a declaration by the deadline of 1 September. The harbour authority must then impose a surcharge in accordance with section 6 of the Act (see below).
- 5.3 Scenario 2: If an equivalence declaration is requested by a harbour authority and the declaration only confirms that in what remains of the relevant year non-qualifying seafarers working on ships providing the service will be paid the NMW equivalent, and does not confirm that the operator has been paying the NMW equivalent in the period of the relevant year before the equivalence declaration was provided. In such circumstances the harbour authority must impose surcharges on the operator in respect of all the occasions that the service entered the harbour before the period covered by the equivalence declaration.

Example of scenario 2:

- Service E is a new service which will run from UK Harbour X to French Harbour Y.
 On 1 September it informs the harbour authority that it will increase the frequency of its service so that it will call at Harbour X 160 times a year. There are 4 vessels operating this service, each calling at the harbour 40 times a year.
- The harbour authority has reasonable grounds to believe the service will call at the harbour on at least 120 occasions in the relevant year and requests an equivalence declaration on 1 September in respect of the relevant year 1 June 2024-31 May 2025. The deadline for the operator to provide the equivalence declaration is 30 November 2024.
- The operator has not been paying non-qualifying seafarers working on the service at least the NMW equivalent for work carried out in the UK and its territorial waters from 1 June but upon receiving the request for an equivalence declaration, increases pay to above the NMW equivalent. The operator submits an equivalence declaration on 30 November stating that in what remains of the relevant year non-qualifying seafarers working on ships providing the service will be paid a rate that is equal to or exceeds the NMW equivalent.
- The harbour authority imposes surcharges for every time ships providing the service called at the harbour between 1 June 2024 and 30 November 2024.
- 5.4 **Scenario 3:** If an operator provides an equivalence declaration and they notify the harbour authority that at a specified time after the equivalence declaration was provided the service was, or started to be operated inconsistently with the equivalence declaration.

Example of scenario 3:

- Operator F provides a declaration to the harbour authority stating that they are paying all non-qualifying seafarers at least the NMW equivalent rate.
- Following the annual uprating of the NMW equivalent rate in line with the changes to the NMW in April, the operator does not increase the rate of pay for non-qualifying seafarers working in UK territorial waters and so these seafarers are being paid below the new NMW equivalent rate.
 - Operator F notifies the harbour authority that this is the case. The harbour authority must then impose a surcharge for each occasion that a ship providing the service entered or enters the harbour from the time that the service started to be operated inconsistently with the declaration and the end of the relevant year, unless the operator later provides a fresh declaration in which case no surcharges are imposed after this date.
- 5.5 **Scenario 4**: If the harbour authority has reasonable grounds to believe that after the declaration was provided, the service was, or started to be operated inconsistently with the declaration, or that the declaration is false or misleading in so far as it concerns the operation of the service before the declaration was provided. They might have reasonable grounds to believe this if they receive evidence from an

interested party such as a trade union or a seafarer, or from the MCA, who are responsible for enforcement of criminal offences under the Act. The harbour authority is under no duty to make enquiries as to whether a service is being operated inconsistently with an equivalence declaration, or whether a declaration is false or misleading. However if information comes to their attention such that they have reasonable grounds to believe that this is the case, they would be required to impose surcharges. A harbour authority can also pass on any concerns to the MCA.

Example of scenario 4:

- Operator G has provided an equivalence declaration to the harbour authority stating that they are paying all non-qualifying seafarers the NMW equivalent for time worked in the UK and its territorial waters.
- The harbour authority is then contacted by union representatives who provide them
 with clear evidence that there are non-qualifying seafarers working on the service
 that are being paid less than the NMW equivalent.
- The harbour authority therefore has reasonable grounds to believe that the service is being operated inconsistently with the declaration and must then impose a surcharge.

Imposition of surcharges

- 5.6 The amount of a surcharge is to be determined by the tariff of surcharges specified in the Regulations [FURTHER GUIDANCE TO BE PROVIDED IN SECOND CONSULTATION]. The surcharge must be imposed on each occasion when a ship providing the service entered or enters the harbour between the beginning of the relevant year and whichever is the earlier of the end of the relevant year or the operator providing an equivalence declaration.
- 5.7 Where an equivalence declaration has been requested for a relevant year, but the operator does not provide it before the deadline, the harbour authority must impose surcharges. If the operator later provides an equivalence declaration, the harbour authority is no longer required to impose surcharges.
- 5.8 Where the equivalence declaration is for the whole of the relevant year, the harbour authority must refund any surcharges already paid for occasions on which ships providing the service entered the harbour in the period between the beginning of the relevant year and the date on which the period for providing an equivalence declaration expired.
- 5.9 Where an equivalence declaration relates only to what remains of the relevant year, the harbour authority must not refund surcharges imposed in respect of occasions when ships providing the service entered the harbour between the beginning of the relevant year and the time the equivalence declaration is provided.
- 5.10 The harbour authority's duty to impose a surcharge is subject to any direction given by the Secretary of State not to impose a surcharge.

- 5.11 A harbour authority which fails to comply with a duty to impose a surcharge is guilty of an offence and liable on summary conviction to a fine in England and Wales or to a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.
- 5.12 A harbour authority may retain surcharge payments and use them for the purposes of shore-based welfare facilities for seafarers.

Notification of the imposition of a surcharge

- 5.13 A harbour authority which imposes a surcharge must notify the operator of the service within 14 days of the duty to impose the surcharge arising. A harbour authority may include multiple surcharges in a single surcharge notification, so long as the notification is provided no later than 14 days after the date on which the duty to impose the first surcharge to which the notification relates arises. This means that there does not need to be a separate surcharge notification each time a vessel operating the service enters the harbour.
- 5.14 The surcharge notification must be in writing and may be given by delivering it to, sending it to or leaving it at the operator's:
- registered office;
- principal place of business; or
- another address specified by the operator as their address for service; or
- an email address the operator has advised surcharge notifications can be sent to.
- 5.15 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.
- 5.16 It is the responsibility of the harbour authority to ensure that they are sending the notification to the correct person.
- 5.17 A surcharge notification must be dated and include:
- the amount of each surcharge to which the notification relates;
- the date to which each surcharge relates;
- how payment may be made to the harbour authority; and
- the payment deadline.
- 5.18 It is recommended that harbour authorities set out in the notification that the consequence of non-payment of the surcharge is refusal of harbour access (see Chapter 5 below). It is also recommended that they inform the operator that they have a right to object to the surcharge to the Secretary of State within 28 days of receiving the surcharge notification.

5.19 The harbour authority must send a copy of the surcharge notification to the Secretary of State within the period of 7 days beginning on the day on which the surcharge notification is sent to the operator. It should be sent by email to the following address:

[TO BE CONFIRMED]

Example:

- 5.20 The operator fails to provide the equivalence declaration within the prescribed period (which expired on 28 June 2024). The harbour authority's duty to impose the first surcharge arises on 29 June, relating to calls by ships providing the service on 3, 15 and 25 June. It is also required to impose subsequent surcharges when ships providing the service call at the harbour on 3, 7 and 11 of July.
- 5.21 The harbour authority writes to the operator on 12 July 2024 (within 14 days of the duty to impose the first surcharge arising) notifying them of the imposition of surcharges. This makes clear that the operator is liable to pay surcharges relating to calls by ships providing the service on 3, 15 and 25 of June, and 3, 7 and 11 of July and the amount of each surcharge as well as how payment may be made and the payment deadline. The harbour authority also explains the consequences of non-payment and alerts the operator to their right to object to the Secretary of State and the deadline for lodging an objection.
- 5.22 The harbour authority sends a copy of the surcharge notification to the Secretary of State by 18 July 2024 (within 7 days of sending the notification to the operator).
- 5.23 On [1 September 2024] the operator provides an equivalence declaration confirming that it has been paying all non-qualifying seafarers the NMW equivalent since the beginning of the relevant year.
- 5.24 The harbour authority must refund any surcharges that have been paid as respects calls to the harbour between the beginning of the relevant year and the date on which it was required to provide the equivalence declaration (i.e. between 1 June 2024 and 28 June 2024). The harbour authority allows the operator to access the harbour as usual for the remainder of the relevant year.

Period for payment of surcharges

5.25 On receipt of a surcharge notification, an operator must pay the surcharge(s) within 60 days of day after the day on which the surcharge notification is sent.

Objections to surcharges

- 5.26 Interested parties have a right to object to the imposition or amount of a surcharge to the Secretary of State.
- 5.27 An interested party (defined as a person or representative body appearing to the Secretary of State to have a substantial interest in the imposition of the surcharge or its amount) may make an objection to the imposition of a surcharge by a harbour authority or its amount. An objection to the amount of a surcharge can only be made

- on the grounds that it is not in accordance with the tariff of surcharges specified in the regulations.
- 5.28 Objections must be made to the Secretary of State in writing by letter or e-mail within 28 days of operator receiving the surcharge notification. The Secretary of State may extend the deadline if satisfied that there are good reasons for doing so. For example, an extension may be allowed where an operator can evidence that they did not receive the surcharge notification.
- 5.29 The address to post written objections to the Secretary of State is: [TBC]
- 5.30 The e-mail address to send written objections to the Secretary of state is: [TBC]
- 5.31 Where an objection is made, the Secretary of State will send a copy of the objection to the harbour authority and publish a notice on gov.uk [address TBC] with details of the objection and how to make any representations in relation to the objection. If any representations are made, the Secretary of State will send copies to the harbour authority and the objector and allow them a reasonable time to comment.
- 5.32 Once the time for any representations and further comments has expired, the Secretary of State will consider the objection and any representations made. Following that consideration, the Secretary of State may decide:
- to approve the imposition of the surcharge and its amount;
- to direct the harbour authority to revoke the imposition of the surcharge; or
- to direct the harbour authority to increase or decrease the amount of the surcharge so that it is in accordance with the tariff of surcharges specified in the Regulations.
- 5.33 The Secretary of State may also direct a harbour authority to repay any surcharges as appropriate as the result of a decision. For example, if the Secretary of State decides to direct the harbour authority to revoke the imposition of the surcharge, they may also direct the harbour authority to refund any surcharges that have already been paid.
- 5.34 The Secretary of State will communicate the decision to the harbour authority and the objector and publish the decision online.
- 5.35 Where the Secretary of State considers that the substance of an objection has already been, or is being considered in connection with another objection, they would not consider the later objection.

Examples - Objections

5.36 Example 1:

 The operator of Service I fails to provide an equivalence declaration after it is requested by the harbour authority.

- The harbour authority writes to the operator notifying them of the imposition of a surcharge.
- The operator writes to the Secretary of State with an objection.
- The Secretary of State sends a copy of the objection to the harbour authority and publishes an online notice stating that the objection has been made, the grounds on which it has been made and specifies that any representations in relation to the objection may be made to the Secretary of State within the period specified in the notice. If any representations are made the Secretary of State sends them to the harbour authority and the objector, allowing a reasonable time to comment on them.
- After the period for representations and the time for any comments has elapsed the Secretary of State considers the objection and any representations made.
- The Secretary of State makes the decision to approve the imposition of the surcharge and the surcharge amount on the grounds that the imposition of the surcharge is in accordance with the tariff of surcharges set out in the regulations.
- The Secretary of State communicates the decision to approve the imposition of the surcharge to the harbour authority and the operator of Service I. The decision is published online.

Example 2:

- The operator of Service J fails to provide an equivalence declaration after it is requested by the harbour authority.
- The harbour authority writes to the operator notifying them of the imposition of a surcharge.
- The operator writes to the Secretary of State with an objection to the tariff of the surcharge.
- The Secretary of State sends a copy of the objection to the harbour authority and publishes an online notice stating that the objection has been made, the grounds on which it has been made and specifies that any representations in relation to the objection may be made to the Secretary of State within the period specified in the notice. If any representations are made the Secretary of State sends them to the harbour authority and the objector, allowing a reasonable time to comment on them.
- After the period for representations and the time for any comments has elapsed the Secretary of State considers the objection and any representations made.
- The Secretary of State considers that the surcharge imposed is not consistent with the tariff of surcharges set out in the Regulations so makes the decision to direct the harbour authority to decrease the amount of the surcharge accordingly and to repay the proportion of the surcharges that have been charged in excess of the tariff.

- The Secretary of State communicates the decision to direct the harbour authority to decrease the amount of the surcharge and repay any excess surcharges to the harbour authority and the operator of Service I. The decision is published online.
- The harbour authority must start to charge the correct amount of surcharges and repay the proportion of the surcharges that have been charged in excess of the correct tariff.

Publication of surcharges

- 5.37 The MCA will publish reports on gov.uk containing the following information on each surcharge that is notified to the Secretary of State:
- the amount of the surcharge,
- the date the surcharge was imposed,
- the harbour authority which imposed the surcharge, and
- the operator of the service on which it was imposed.

Chapter 5: Refusal of harbour access for failure to pay a surcharge

- 6. A harbour authority must refuse a service access to its harbour if it has imposed a surcharge on the operator of the service and the operator has not paid the surcharge in the form, manner and period prescribed in the Regulations. Access must be refused irrespective of whether an objection has been made by the operator.
- 6.1 A harbour authority's failure to comply with this duty is an offence, punishable on summary conviction by a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.
- 6.2 The duty to refuse access to a harbour is subject to any direction by the Secretary of State not to refuse access. Such a direction might be made when there are national security or resilience concerns that mean a ship operating the service should not be refused access. The duty to refuse access to a harbour also does not apply in circumstances where a harbour authority has imposed a surcharge but is required to refund the surcharge because the operator subsequently provides a valid equivalence declaration covering the whole of the relevant year.
- 6.3 There are also four exceptions where a harbour authority must not refuse access to its harbour:
- in cases of force majeure;
- where there are overriding safety concerns;
- where there is a need to reduce or minimise the risk of pollution;
- where there is a need to rectify deficiencies on the ship.

Notification of refusal of harbour access

- 6.4 The harbour authority is required to notify the operator of refusal of access to its harbour where all the below apply:
- a surcharge has been imposed by the harbour authority;
- a surcharge notification has been sent to the operator of the service; and
- the surcharge has not been paid in the manner required by the surcharge notification.

- 6.5 The harbour authority must send a refusal of access notification to the operator in the 5 days beginning with the day 45 days after the day on which the surcharge notification was sent.
- 6.6 The refusal of access notification must be in writing and may be given by delivering or sending it to or leaving it at the operator's:
- registered office;
- principal place of business; or
- another address specified by the operator as their address for service; or
- an email address the operator has notified the harbour authority that the refusal of access notification can be sent to.
- 6.7 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.
- 6.8 A refusal of access notification must include:
- the date of the relevant surcharge notification;
- the amount of each surcharge in the relevant surcharge notification which has not been paid; and
- 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.

Example

- 6.9 The harbour writes to the operator notifying them of the imposition of surcharges on 1 August.
- The operator does not pay the surcharges by 15 September (45 days after the surcharge notification was sent). The harbour notifies the operator within the next 5 days that they will refuse ships providing the service access to the harbour if the payment is not made by the deadline of 30 September.
- The operator fails to pay the surcharges by the payment deadline. Access is refused until the surcharges are paid.

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

6.10 The harbour authority must notify the Secretary of State if a surcharge has been imposed but not paid in the manner specified by the surcharge notification.

Notification must include the name of the operator and the date and time from which

ships providing the service will be refused access should the surcharge remain unpaid.

6.11 Notification must be sent between days 50-55 after the day on which the surcharge notification was sent to the operator to the following email address: [TBC].



Chapter 6: Enforcement

Provision of information by operators

- 7. The Secretary of State has a power under section 12 of the Act to give notice to an operator of a service in scope of the Act requiring it to provide information in the manner and within the period specified in the notice, for the purpose of:
- establishing whether a service is or at any time was being operated consistently with an equivalence declaration provided by the operator, or
- establishing whether an equivalence declaration provided by the operator is false or misleading in so far as it concerns the operation of the service before the equivalence declaration was provided.
- 7.1 This may include information relating to the service and information relating to the people working on ships providing the service and their remuneration.
- 7.2 An operator is not required to provide information to the extent that doing so would cause the operator to breach domestic data protection legislation or the data protection laws of any country or territory outside the UK.
- 7.3 It is an offence for an operator to fail to provide information required in the manner and within the period specified, to provide information that is false or misleading, or to provide information that becomes false or misleading and fail to inform the Secretary of State within four weeks. This offence is punishable on summary conviction by a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Provision of information by harbour authorities

- 7.4 The Secretary of State has a power under section 13 of the Act to give notice to a harbour authority, to require the harbour authority to provide information, in the manner and within the period specified in the notice, for the purpose of establishing whether, or to what extent, the authority is complying with its duties under the Act.
- 7.5 This may include information about:
- the services provided by ships that use the harbour,
- equivalence declarations requested by, or provided to, the harbour authority,
- surcharges imposed or received by the harbour authority, and

- decisions by the harbour authority to refuse or not refuse access to its harbour.
- 7.6 A harbour authority is not required to provide information to the extent that doing so would cause the operator to breach domestic data protection legislation.
- 7.7 Any notice given may require the information to be provided in a manner, and within a time period, specified in the notice.
- 7.8 It is an offence for an operator to fail to provide the information required in the manner and within the time period specified, to provide information that is false or misleading, or to provide information that becomes false or misleading and fail to inform the Secretary of State within four weeks. This offence is punishable on summary conviction by a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Inspections

- 7.9 The Secretary of State delegates the duty to inspect operators and harbour authorities to the MCA. The MCA may board a ship in a harbour in the United Kingdom or enter any premises for the purposes of:
- establishing whether a service is being operated consistently with an equivalence declaration;
- establishing whether an equivalence declaration is false or misleading in so far as it concerns the operation of a service before the equivalence declaration was provided;
- verifying any information provided by operators under section 12 of the Act;
- establishing whether, or to what extent, a harbour authority is complying with its duties under the Act; or
- verifying any information provided by a harbour authority under section 13 of the Act.
- 7.10 The powers of the MCA inspectors include:
- making such inspection as they consider necessary;
- being accompanied by another person;
- requiring a person to answer questions and sign a statement that their answers are true, at the time of the inspection or subsequently at a time specified by the inspector;
- requiring the production of documents (including requiring provision of information held in electronic form in a legible format);
- requiring a person to provide facilities and assistance to the inspector, where that is in that person's control.

7.11 It is an offence for a person to intentionally obstruct an inspector in the exercise of their powers; to fail without reasonable excuse to comply with a requirement imposed by under section 14, or to prevent another person from complying with such a requirement; or to make a statement which the person knows is false or misleading, or to recklessly make such a statement, in purported compliance with a requirement imposed under section 14. Such an offence is punishable on summary conviction by a fine in England and Wales, or a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Prosecution of offences

7.12 Section 15 of the Act provides that in England and Wales and Northern Ireland proceedings relating to offences under the Act may be prosecuted by the Secretary of State. In practice any prosecutions under the Act will be brought by the MCA. In Scotland, all prosecutions are brought by the Lord Advocate.



Annex A: National Minimum Wage Equivalence Declaration Form

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.
\Box 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 to20
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:

