Department for Transport

Guidance on the Seafarers' Wages Regulations

October 2024

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33 Horseferry Road
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Contents

Chapter 1: Introduction

Who 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.

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 provision of a National Minimum Wage equivalence declaration.

Chapter 2: To whom does the Act apply?

2. The Act requires any 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 confirms that seafarers on the service who do not qualify for the National Minimum Wage (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. This includes services between the UK and the Crown Dependencies. The Act therefore does not apply to domestic services, which are covered by the National Minimum Wage Act. The Act does not apply to a service that is for the purpose of leisure or recreation or 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 to be 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 based on the individual facts of the case. Key factors that should be taken into consideration include the consistency in the product offered to end-users and how it is marketed or made available for booking to the end-user. Examples below are illustrative but not exhaustive.

Examples

2.4 **Example 1:** Operator A has two passenger 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 performing the same type of passenger service on the same route and would be out of scope as it calls less than 120 times pa.

2.5 **Example 2:** Operator B has one passenger ferry operating the Dover/Calais route and another passenger ferry ship operating between Hull and Rotterdam, each making 100 calls a year. These would be two different services, as they are calling at different places outside the UK and both would be out of scope as they each call less than 120 times pa.

2.6 **Example 3:** Operator C and Operator D are completely separate companies with different brand identities. Both operate passenger ferries between Hull and Rotterdam. Operator C runs 100 times a year and Operator D runs 150 time a year. Operator C would not be in scope as it runs fewer than 120 times a year and is a distinct service from that run by Operator D. Operator D's service would be in scope as it calls more than 120 times a year.

2.7 **Example 4**: Operator E runs a passenger ferry service X between Dover and Calais which calls 130 times a year. Operator E also runs a lift-on lift off freight service Y which does not carry any passengers. This service calls 80 times a year. These services are separate as they are for different purposes. Service X is in scope but Service Y is not.

2.8 **Example 5**: Operator F runs passenger ferries between Dover and Calais. They have two vessels operating on this route. Vessel A runs 100 times a year and Vessel B also runs 100 times a year. Vessel A has a bar whereas Vessel B does not. Both vessels are running the same service as they are operating the same route for the same purpose, even if they have slightly different facilities on board.

2.9 **Example 6:** Operator G runs a ferry service between Dover and Calais. It charters in a vessel from Operator H to form part of that service. Sailings from that vessel are advertised as part of the same service as those from vessels owned by Operator G and run to the same schedule. Vessels owned by Operator G call at Dover 100 times a year and the chartered vessel from Operator H calls 40 times a year. The service run by Operator G would be in scope of the legislation because all the vessels are operating the same service, regardless of the fact that one vessel is owned by another company. Any declaration provided by Operator G would have to encompass the sailings of the vessel owned by Operator H.

2.10 **Example 7**: Operators I, J and K operate a vessel sharing arrangement between a UK port and a port outside the UK. Each operator provides one vessel, and each partner has space on each vessel. The vessel sharing agreement has no legal identity of its own and each company has separate contracts with the ports. Each vessel calls at the UK port 50 times. Each company advertises a service of 150 times a year to customers individually under its own name and determines its own commercial terms, including prices. Shipping lines I, J and K would all be operating services in scope because the services that they are each offering to customers are calling more than 120 times, even if it is on different vessels. In this instance, given the operators are each advertising a service that calls 150 times pa, the harbour authority has reasonable grounds to believe that each service will call 120 times, it must request a declaration from each operator.

What is an operator?

2.11 The operator is the person who has taken over, the duties and responsibilities imposed on shipowners under the Maritime Labour Convention in respect of any ship providing the service.

2.12 Where a harbour authority is required to communicate with the operator for the purposes of the Act, it is that authority's responsibility to ascertain who the operator is

under this definition. If they are uncertain, they ought to communicate with their customers to determine this. For example, they might consider consulting the designated person ashore, who could assist them in finding the contact information for the MLC shipowner. In most cases, the MLC shipowner will be the same as the technical owner of the ship. In some cases, it could be the manager, agent or charterer who has assumed the responsibility for the operation of the ship from the owner.

2.13 The regulations also provide that the harbour authority can communicate with the master of the vessel as an intermediary.

What is a harbour authority?

2.14 For the purposes of the Act, harbour authority has the meaning given in section 57 of the Harbours Act 1964 for harbour authorities in England, Wales and Scotland, and in section 38 of the Harbours Act (Northern Ireland) 1970 for harbour authorities in Northern Ireland.

2.15 This means any person in whom are vested under this Act, by another Act or by an order or other instrument (except a provisional order) made under another Act or by a provisional order powers or duties of improving, maintaining or managing a harbour.

What is a non-qualifying seafarer?

2.16 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 (this could be anyone who is employed in order to help the service be carried out, including cooks, able seamen, apprentices etc); 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 person does not work, or does not ordinarily work, in the United Kingdom.

2.17 Eligibility for NMW is set out in the National Minimum Wage Act 1998.

2.18 NMW is a legally defined term under the National Minimum Wage Act 1998 (c. 39) (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.

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 December 2024 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 them as a customer, requesting that they provide a declaration in the form provided in Schedule 1 of the Regulations.

How should an equivalence declaration be provided?

3.4 The equivalence declaration must be provided to the harbour authority by the operator:

3.5 within a period of three calendar months starting on the date of the request from the harbour authority;

3.6 in writing;

3.7 in the form contained in Schedule 1 of the Regulations

3.8 in the manner specified by the harbour authority, for example a harbour authority has flexibility to specify that they receive the declaration by email, as part of an online vessel notification system, by fax etc.

When a harbour authority must request a declaration

3.9 A harbour authority must request an equivalence declaration from the operator of a service to which the Act applies within whichever is the later of:

- 28 days of 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, or
- 28 days following the 1 January before the relevant year.

3.10 "Reasonable grounds" is a test which requires that a reasonable person given the same information would believe that the service will call 120 times or more in any relevant year. That information might include published schedules, past calling patterns or communications from the operator of the service.

3.11 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 in the relevant year, the request could be rescinded. 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, they 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.

3.12 Equivalence declarations can be requested by harbour authorities before, during or after a relevant year.

Before the relevant year:

3.13 A harbour authority must request an equivalence declaration before the beginning of the relevant year where they already have reasonable grounds to believe that ships providing a service to which the Act applies will call at its harbour 120 times in the coming year before it starts.

During the relevant year:

3.14 A harbour authority must request an equivalence declaration during the relevant year where it did not have reasonable grounds to believe that ships providing a service to which the Act applies would call at its harbour 120 times in that year until after the

year has already begun. They have 28 days from this becoming apparent to request a declaration.

After the relevant year:

3.15 A harbour authority must request an equivalence declaration after the relevant year has ended if it did not have reasonable grounds to believe that ships providing a service to which the Act applies would call at its harbour 120 times before or during the relevant year, but it becomes apparent towards the end of the year that they did in fact call at its harbour 120 times that year, and it has 28 days from this becoming apparent to request a declaration.

3.16 Below are examples of cases 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. The harbour authority has 28 days from this becoming apparent to request a declaration. These examples are intended to be illustrative only and each service will need to be considered on its individual facts.

3.17 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 five 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 they intend 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 1 January before the new relevant year.

3.18 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 (1 December 2025) there is no indication from Operator B that they intend to make any changes to the service, but in several months into the 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 between 1 December 2025 and 30 November 2026, 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 31 July 2026 and so it must request an equivalence declaration within 28 days of becoming aware.

3.19 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 they will change their schedule.

- In the last month of the year, the operator changes their schedule to include an extra 5 calls at UK Harbour X, meaning that by the end of the year, it turns out that they have called 120 times a year.

- The harbour authority therefore has reasonable grounds to believe that this has happened and must request an equivalence declaration. They have 28 days to do so from having reasonable grounds to believe that they would call 120 times a year.

Penalties

3.20 If a harbour authority 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 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.

3.21 There are also offences 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.

How and when should an equivalence declaration be provided?

3.22 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 1 of the Regulations;

- in the manner specified by the harbour authority. For example, a harbour authority has flexibility to specify that they receive it by email, as part of an online vessel notification system etc. This is to provide flexibility for harbour authorities.

Chapter 4: Surcharges

What is a surcharge?

4. A surcharge is a charge imposed on the operator of a service that has failed to provide an equivalence declaration 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 vessels operating the service to the port. See Chapter 5.

5.1 There are four circumstances in which a harbour authority must impose a surcharge, outlined in the scenarios below:

5.2 **Scenario 1:** If a harbour authority requests an equivalence declaration from an operator and it is not provided by the deadline, the harbour authority must impose a surcharge on the operator.

Example of scenario 1:

- Service E has been running from UK harbour X to French harbour Y 160 times a year for the past 5 years. 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 to be submitted by 28 November 2024 for the year 1 December 2024-30 November 2025.

- The operator does not provide a declaration by the deadline of 28 November. The harbour authority must then impose a surcharge in respect of every time the service has called at the harbour since 1 December and every time it continues to access the harbour until 30 November 2025 .

5.3 **Scenario 2**: If an operator provides a declaration saying that they have not been paying NMWe for the beginning of the relevant year but they will pay it for the rest of the year. The surcharge therefore applies to every time they entered the harbour before they started paying NMWe.

Example of scenario 2:

- Service E has been running from UK harbour X to French harbour Y 160 times a year for the past 5 years. 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 to be submitted by 1 November 2024 in respect of the year 1 December 2024-30 November 2025.

- 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 December but upon receiving the request for an equivalence declaration, increases pay to above the NMW equivalent. The operator submits an equivalence declaration on 1 January 2025 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 December 2024 and 1 January 2025.

5.4 **Scenario 3:** If an operator provides a declaration saying they will pay NMWe for the whole year, but then they tell the harbour authority that they in fact did not pay NMWe for part of the year. The harbour authority must then impose a surcharge for every time the operator entered the port while operating inconsistently with the 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 ships 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**: 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 and misleading.

5.6 They would have reasonable grounds to believe this if they receive evidence from the MCA after they have completed an initial investigation as part of their 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, 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 they receive from interested parties such as unions, seafarers' representatives etc 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 the MCA who provide them with clear evidence as a result of their investigations that there are non-qualifying seafarers working on the service that are being paid less than the NMW equivalent. The MCA inform the harbour authority of this so a surcharge can be levied until MCA complete enforcement proceedings.

- 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 for every time the service accesses the harbour from the date on which they received the information.

What is the tariff?

5.7 Where a surcharge is imposed on an operator, the amount will be determined by the tariff of surcharges specified in [Schedule 2] to the Regulations.

5.8 The intention is that the surcharge is at a level such that it incentivises the payment of NMW equivalent.

5.9 The tariff is based on the gross tonnage (GT) 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.

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

- 5p per GT up to a maximum of 50,000 GT.

- 1p per GT in excess of 50,000 GT.

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

- 10p per GT up to a maximum of 50,000 GT.

- 2p per GT in excess of 50,000 GT.

5.11 This tariff is to be applied every time a ship providing a service on which a surcharge has been imposed enters the harbour.

5.12 **Example 1**:

5.13 The surcharge is imposed on the operator of service A as they failed to provide a declaration within the period prescribed in the Regulations. Service A is provided by Ship X and Ship Y. These are both passenger ferries certified to carry more than 12 passengers.

5.14 Ship X has a gross tonnage of 47,500. Every time this ship enters the harbour, a surcharge of £9,500 would apply (47,500 x 20p)

5.15 Ship Y has a gross tonnage of 50,100. Every time this ship enters the harbour, a surcharge of £10,002 would apply. (50,000 x 20p + 100 x 2p).

5.16 **Example 2**:

5.17 The surcharge is imposed on the operator of service B as they failed to provide a declaration within the period prescribed in the Regulations. Service B is provided by Ship Z, a Ro-Ro cargo ship certified to carry 12 or fewer passengers.

5.18 Ship Z has a gross tonnage of 15,000. Every time this ship enters the harbour, a surcharge of £1,500 would apply (15000 x 10p).

Who applies the tariff?

5.19 It is for harbour authorities to apply the tariff to ships calling at their harbour when a surcharge is imposed on the operator of that service.

Imposition of surcharges

5.20 The surcharges 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.

5.21 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.

5.22 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.

5.23 Where an equivalence declaration relates only to what remains of the relevant year, the harbour authority must not refund surcharges imposed before the date the equivalence declaration is provided.

5.24 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.

5.25 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.

5.26 The Act sets out that surcharge payments are to be retained by the harbour authority and used for the purposes of shore-based welfare facilities for seafarers. In line with the MLC 2006 Regulation 4.4, examples of the use of such funds include meeting and recreation rooms, facilities for sports and outdoor facilities including competitions, educational facilities and where appropriate, facilities for religious observances and for personal counselling.

5.27 Harbour authorities may wish to consult the National Port Welfare Committees, who in their role of overseeing welfare provision can advise on the use of surcharge funds. See the list of National Port Welfare Committees and their boundaries below:

- London and Southeast: River Blackwater – Beachy Head
- Southern: Beachy Head – Portland
- South West: Portland – North Somerset Border
- Bristol: North Somerset Border – Sharpness
- South Wales: Severn Bridge – Carmarthen
- Milford Haven: Carmarthen – Carnarvon
- North West: Carnarvon – West Scottish Border
- Central & West Scotland: West Scottish Border – Cape Wrath (plus East Scottish Border to Dundee)
- North & East Scotland: Cape Wrath – Dundee
- Tyne Area: East Scottish Border – Seaham
- Tees Area: Seaham - Scarborough
- Humber Ports: Scarborough – Skegness

- East Anglia: Skegness – Southwold
- Haven Ports: Southwold - River Blackwater
- Northern Ireland – entire coastline

Notification of the imposition of a surcharge

5.28 A harbour authority which imposes a surcharge must notify the operator of the service within 14 days of the missed deadline for submitting a declaration. 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 first surcharge to which the notification relates was imposed. This means that there does not need to be a separate notification each time a vessel operating the service enters the harbour.

5.29 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 to which the operator has advised surcharge notifications can be sent.

5.30 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.

5.31 It is the responsibility of the harbour authority to ensure that they are sending the notification to the correct person.

5.32 A surcharge notification must include:

- the amount of each surcharge to which the notification relates;
- the date each surcharge was imposed;
- how payment may be made to the harbour authority;
- the payment deadline;

5.33 The harbour authority must send a copy of the surcharge notification to the Secretary of State within 7 days from the day the surcharge notification is sent to the operator. It should be sent by email to the following address: Mca.investigations@mcga.gov.uk.

Example:

5.34 The operator fails to provide the equivalence declaration within the prescribed period (which expired on 28 November 2024).

5.35 The harbour authority writes to the operator on 12 December 2024 (14 days after the deadline for providing the equivalence declaration) notifying them of the imposition of surcharges. This will make clear that they are liable to pay surcharges for each time the service called at the harbour between the start of the relevant year and the notification being made, as well as charges that will be made in the future until the surcharges are paid or declaration received.

5.36 The harbour authority sends a copy of the surcharge notification to the Secretary of State by 19 November 2024 (7 days after the notification is sent to the operator).

5.37 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 on 1 December 2024.

5.38 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 December 2024 and 28 November 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

5.39 On receipt of a surcharge notification, an operator must pay the surcharge(s) within 60 days of the surcharge notification being imposed.

Objections to surcharges

5.40 Interested parties have a right to object to the imposition or amount of a surcharge to the Secretary of State.

5.41 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. For example, an operator subject to a surcharge or a trade union representing seafarers working on that service would have a substantial interest in the imposition of the surcharge. A member of the public or a passenger on the service would not have a substantial interest.

5.42 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.

5.43 Objections must be made to the Secretary of State in writing by letter or e-mail within 28 days of the 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 it did not receive the surcharge notification.

5.44 A service operator must still pay the surcharge and should do so in parallel with lodging an objection. If the objection is upheld, the Secretary of State can later direct the harbour authority to repay any surcharges where that is considered appropriate.

5.45 The address to post written objections is: Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG

5.46 The e-mail address to send written objections is: Mca.investigations@mcga.gov.uk

5.47 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 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.

5.48 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.

5.49 The Secretary of State may also direct a harbour authority to repay any surcharges as appropriate due to 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.

5.50 The Secretary of State will communicate the decision to the harbour authority and the objector and publish the decision online.

5.51 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

5.52 Example 1:

- The operator of Service I fails to provide the 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 uphold the decision to impose the surcharge to the harbour authority and the operator of Service I. The decision is published online.

1.1 Example 2:

- The operator of Service J fails to provide the 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 makes the decision to uphold the objection to the surcharge amount on the basis that it is not consistent with the correct tariff set out in the regulations.
- The Secretary of State communicates the decision to uphold the decision to impose the surcharge to the harbour authority and the operator of Service I. The decision is published online.

- The harbour authority must repay any surcharges that have already been paid.

Publications of surcharges

5.53 The MCA will publish reports on gov.uk including information on each surcharge that is notified to the Secretary of State and includes the following:

- 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 access to its harbour if it has imposed a surcharge on the operator of a service and the operator has not paid the surcharge in the form, manner and period prescribed in the Regulations, irrespective of whether an objection has been made by the operator.

7. Where access must be refused, we would expect the harbour authority to use their usual means of restricting access to a vessel that they would use in any other circumstances, for example, via vessel traffic services which is commonly used when there is not space for a vessel.

7.1 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.

7.2 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.

7.3 The following exceptions are 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

7.4 The harbour authority is required to notify the operator of refusal to access 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.

7.5 The harbour authority must send a refusal of access notification to the operator in the 5 days before the 50th day after the surcharge notification was sent.

7.6 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 activity; or
- another address specified by the operator as their address for service; or
- an email address to which the operator has notified the harbour authority that the refusal of access notification can be sent.

7.7 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.

7.8 A refusal of access notification should 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

7.9 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 imposition of the surcharges). 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

7.10 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.

7.11 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: Mca.investigations@mcga.gov.uk

Cancellation of a refusal of access notification

7.12 Where an operator makes payment of a surcharge for which a refusal of access notification has been issued, the refusal of access notification in relation to that surcharge is cancelled.

Chapter 6. National Minimum Wage Equivalent

Overview

8. The Act makes access to UK harbours for international services calling regularly at the UK conditional on paying seafarers a rate at least equivalent to the NMW for their UK work or a surcharge. The Regulations specify what constitutes the NMW equivalent rate ("NMW equivalent"), as well as setting out the method of calculating the hours that a seafarer is deemed to be working and the hourly rate that they are being paid.

Relationship with the NMW legislation

8.1 The Regulations use some of the same concepts as the National Minimum Wage Act 1998 and the National Minimum Wages Regulations 2015 ("the NMW legislation"). However, there are important differences between the system established by the Regulations and the NMW legislation. In particular, users of the Regulations should be aware that some concepts from the NMW legislation are applied in a different way by the Regulations.

Calculation of the hourly rate of pay

8.2 The main distinction between the NMW legislation and the Regulations concerns the calculation of the hourly rate that seafarers are being paid.

8.3 Under the NMW legislation there is a single calculation to determine whether the NMW has been paid: remuneration divided by hours of work. That results in a single hourly rate at which a worker is treated as remunerated.

8.4 Under the Regulations there are three hourly rates:

- The basic rate: this is essentially the hourly rate received by a seafarer for all of their work before there has been any uplift in pay to meet the NMW equivalent. It is calculated by dividing a seafarer's basic remuneration by their total hours of work.

- The UK additional rate: this is the hourly rate received by a seafarer which is specific to their hours of work carried out in the UK or its territorial waters ("UK work"). It is calculated by dividing UK additional remuneration (if any) by hours of UK work. UK additional remuneration is any remuneration paid to the seafarer in addition to their basic remuneration in order to meet the requirements of the Regulations; i.e. it only includes remuneration which is attributable to hours of UK work and which would not be paid to the seafarer if the hours of work were not hours of UK work.

- The overall UK hourly rate: this is the overall hourly rate received by the seafarer for their hours of UK work. It is calculated by adding together their basic rate and their UK additional rate.

8.5 The Regulations and this Guidance give much more detail on these concepts. But the following provides a straightforward example of these concepts in practice.

8.6 Example: Seafarer A (aged 25) works 150 hours a month and their basic remuneration is £1,200. Of the 150 hours, 20 hours a month are hours of UK work.

8.7 Seafarer A's basic rate is £8 an hour (calculated by the sum £1,200/150 hours).

8.8 If the operator of Seafarer A's service wants to provide a declaration under the Act, the Regulations require that Seafarer A be paid the NMW equivalent for their hours of UK work. That is £11.44 an hour for a seafarer aged over 21.

8.9 To meet this requirement an employer could:

8.10 increase Seafarer A's basic rate to £11.44 an hour;

8.11 pay Seafarer A a UK additional rate for their hours of UK work.

8.12 If the employer decided on option (ii), in this example the UK additional rate would need to be £3.44. That would result in an overall UK rate of £11.44 (being £8 + £3.44).

Types of work

8.13 A secondary distinction between the NMW legislation and the Regulations concerns types of work.

8.14 In the NMW legislation, the hours for which an employer must pay a worker the NMW depend on which of four different types of work they perform.

8.15 The Regulations use the concept of three of these types of work: salaried hours work, time work and unmeasured work. However, these concepts are only relevant to calculating the hours worked for the purposes of establishing the basic rate.

8.16 To establish the hours worked as part of calculating the UK additional rate, the Regulations introduce a new concept: hours of UK work. These are the total number of hours of UK work in relation to a relevant service which are worked by the seafarer or treated as hours of UK work in that period.

Pay reference period

8.17 A pay reference period is a length of time setting out how often someone gets paid. For an equivalence declaration to be valid, a seafarer must be remunerated at a rate that is equal to or exceeds the NMW equivalent for their UK work in relation to the service in each pay reference period.

8.18 A seafarer's pay reference period is either:

- a month, or
- if the seafarer is paid by reference to a period shorter than a month, that period.

8.19 A pay reference period can never be longer than one calendar month.

8.20 For example:

- If a seafarer is paid fortnightly, their pay reference period will be 2 weeks.
- If the seafarer's pay is calculated fortnightly (such as if the seafarer has a 2-week shift pattern) but paid monthly, their pay reference period is a month.
- If the seafarer is paid once every 3 months, their pay reference period will be 1 month.
- When determining the pay reference period, it does not matter when the payment of wages is actually made. The important thing to consider is the period the payment covers.
- For example, a seafarer who is paid for the month of August on the last Thursday of the month will have the same pay reference period as someone paid for the same period on the last day of the month i.e. 1st August to 31st August.

What is the rate of the NMW equivalent?

- The hourly rate of the NMW equivalent is the same as the NMW hourly rate, with the same age bands and a separate rate for apprentices. It will be uprated in line with changes to the NMW, which take place annually.
- From 1 April 2024 the rates have been:
- £11.44 for a seafarer who is aged 21 years or over;
- £8.60 for a seafarer who is aged 18 years – 20 years (but is not yet aged 21 years);
- £6.40 for a seafarer who is aged under 18 years;
- £6.40 for a seafarer to whom the apprenticeship rate applies.]

- When a seafarer reaches the age of 18 or 21 years they will move on to a new NMW equivalent rate. Employers are responsible for holding accurate information about seafarers' ages to ensure this happens.

Apprentices

8.21 The apprentice rate will apply if:

- the apprentice is under the age of 19
- the apprentice is aged 19 or over and is in the first year of their apprenticeship with their current employer

8.22 Once an apprentice aged 19 or over has completed the first year of their apprenticeship, the applicable NMW equivalent rate for any UK work is the rate which would apply for their age group from the first day of the pay reference period that begins on or after their 19th birthday or completion of the first year of their apprenticeship.

8.23 A seafarer is treated as employed under a contract of apprenticeship if they are engaged in:

- in England, under Government arrangements known as Apprenticeships (Intermediate, Advanced, Higher and Degree Levels),in Scotland, under Government arrangements known as Modern Apprenticeships,
- in Northern Ireland, under Government arrangements known as Apprenticeships NI, or
- in Wales, under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships

8.24 Apprentices should be distinguished from cadets. The term cadets is not defined in these Regulations, but they tend to be engaged in a period of training and may be undertaking further or higher education courses. They will be paid a bursary rather than a salary or an hourly rate, which may be funded by government Support for Maritime Training grants (SMarT). Declarations will not need to cover cadets who are on board as part of their training if they are not performing work.

To what work does the rate apply?

8.25 Where an operator provides an equivalence declaration, the NMW equivalent rate applies to hours of UK work undertaken by non-qualifying seafarers. UK work is work which is carried out in the UK and its territorial waters. This includes time spent in UK territorial waters and time spent in UK internal waters (including in a harbour).

8.26 It should be noted that all seafarers are also entitled to NMW under the NMW legislation while working in UK internal waters, which includes any time they spend in a UK harbour. The requirements under the NMW legislation are separate to the requirements under the Act. A valid declaration under the Act does not necessarily

indicate compliance under the NMW legislation, and operators should seek to assure themselves that they have met both sets of requirements. Please see guidance on the NMW legislation.

8.27 Under the Territorial Sea Act 1987, the breadth of UK's territorial waters (or territorial sea) is 12 nautical miles. This is measured from baselines established by the Territorial Sea (Baselines) Order 2014 (SI 2014 / 1353). The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast. Internal waters include the sea area landward of baselines.

How is it calculated?

8.28 For a declaration to be valid, a seafarer must be remunerated at a rate that is equal to or exceeds the NMW equivalent for their UK work in relation to the service in the pay reference period (see "Pay Reference Period"). A seafarer's overall hourly rate for their hours of UK work on a service is to be calculated using the following equation:

basic rate + UK additional rate

Basic Rate

8.29 The basic rate is calculated by the equation:

basic remuneration / total hours of work

1.2 where–

1.3 " remuneration" is the basic remuneration in the pay reference period (see section "How remuneration is calculated");

1.4 "total hours of work" are the total hours of work in the pay reference period (see section "Calculating hours worked").

UK Additional Rate

8.30 The UK additional rate is calculated by the equation: .

UK additional remuneration / hours of UK work

8.31 where—

8.32 "UK additional remuneration" is any UK additional remuneration in the pay reference period (see section "How remuneration is calculated").

8.33 "hours of UK work" are any hours of UK work in the pay reference period (see section "Calculating hours worked").

How remuneration is calculated

8.34 Both basic and UK additional remuneration are calculated by taking the payments from the employer to the seafarer as respects the pay reference period, minus any reductions. Regulations 23-24 and 27-28 make provision for how payments and reductions are apportioned between basic and UK additional remuneration.

8.35 See paragraph "Deductions from pay and payments by seafarers that reduce NMW equivalent pay" to see what counts as a reduction.

Payments as respects the pay reference period

8.36 The starting point is the seafarer's gross pay allocated to the pay reference period before any deductions are made. The pay allocated to a pay reference period is any pay, either:

- received by the worker during that period (unless it is pay for the previous period)
- earned in that period but not received until the next pay reference period

8.37 For example, if a seafarer works overtime towards the end of one pay reference period it may be too late for the earnings for any additional hours to be included in their pay for that period. If the seafarer is paid for those additional hours in the next pay reference period, the amount will still count towards the previous period in which they earned it. The same payment cannot be counted against more than one pay reference period.

8.38 Payments that are only attributable to hours of UK work, and which would not be paid to the seafarer if the hours of work were not hours of UK work, form part of a seafarer's UK additional remuneration. For example, if a seafarer (aged 21 years or over) has a basic rate of £6.50 and the employer tops up their pay for hours of UK work by £4.94 to meet the NMW equivalent, then that extra £4.94 per hour would count towards the seafarer's UK additional remuneration.

8.39 Any payment that does not form part of a seafarer's UK additional remuneration forms part of their basic remuneration.

Payments that do not count as remuneration

8.40 The following payments, or elements of a seafarer's pay, made by an employer to a seafarer do not count towards basic or additional remuneration:

- tips, gratuities, service charges and cover charges;
- overtime and shift premia;
- allowances;
- payments by an employer to reimburse a seafarer's expenses;

- benefits in kind;
- loans;
- advances of wages;
- pension payments;
- lump sums on retirement;
- redundancy payments;
- rewards under staff suggestions schemes;
- shares and share options.

Overtime and shift payments

8.41 An employer may pay a seafarer at a higher rate for some of the work they do – for example for working:

- overtime, weekend or night shifts;
- on bank holidays;
- longer than a certain number of hours.

8.42 If they do, the premium element of pay does not count towards pay for the purpose of calculating basic and UK additional remuneration. This only applies to time work and unmeasured work; it does not apply to salaried hours work.

Allowances

8.43 Some employers might pay workers special allowances over and above standard pay. For example, if the worker:

- works in dangerous conditions;
- works unsocial hours;
- performs special duties over and above a worker's normal duties;
- attends work punctually;
- is on call for work.

8.44 These allowances don't count towards NMW equivalent pay unless they are consolidated into the seafarer's standard pay or they relate to the seafarer's performance. Note that where payments are consolidated, they may still not count

towards basic or UK additional remuneration to the extent that they comprise a premium element, such as for overtime or unsocial hours.

8.45 There is no definition to determine when an allowance is consolidated into standard pay. A view has to be taken as to whether the allowance is amalgamated into the overall pay arrangement. Indications that an allowance is consolidated into standard pay can include (but is not restricted to) circumstances when the allowance is:

- treated in line with the overall pay package, such as being treated the same as annual pay increases or decreases, and/or
- included in pensionable pay, and/or
- included when calculating any overtime rate.

Payments by an employer to reimburse a seafarer's expenses

8.46 If a seafarer is reimbursed for money which they have spent on something to do with their job, the reimbursement does not count as NMW equivalent pay. The refund is a reimbursement of the payment made by the worker and therefore there is no overall effect on NMW equivalent pay.

8.47 However, if a seafarer spends money on something connected with their employment – for example, tools or equipment – and is not repaid by the employer, then that amount will reduce their remuneration for NMW equivalent purposes (see section on "Deductions from pay and payment by seafarers that reduce NMW equivalent pay").

Benefits in kind

8.48 Benefits in kind do not count towards NMW equivalent pay, even if they have a monetary value.

8.49 Where an employer provides a salary sacrifice flexible benefit scheme, the salary sacrifice will reduce a seafarer's remuneration.

8.50 In a genuine salary sacrifice, a seafarer gives up a portion of their pay in return for a non-cash benefit. As this amount is 'sacrificed' by the worker, it reduces their pay and so cannot be used as part of their pay for NMW equivalent purposes.

Deductions from pay and payments by seafarers that reduce NMW equivalent pay

8.51 Certain deductions made by the employer from a seafarer's pay, or payments made by the seafarer to the employer, reduce pay for NMW equivalent purposes. For example, an employer might make deductions from pay for mandatory uniform or equipment costs. This means that those deductions or payments will be taken off the overall pay when calculating renumeration. Certain other deductions or payments do not reduce NMW equivalent pay. This is dealt with in Chapter 3 of Part 5 of the Regulations.

8.52 There is no concept of “illegal deductions”, “non-allowable deductions” or “illegal payments” in the Regulations. The arrangements of the parties might reduce the calculation of basic or UK additional remuneration, but that does not make such arrangements “illegal” from the perspective of the Regulations. A deduction, or payment from a seafarer to an employer or operator, only becomes an issue under the Regulations when it risks reducing the seafarer’s pay for hours of UK work below the NMW equivalent.

8.53 If a transaction reduces a seafarer’s remuneration, it does so in the pay reference period in which it is made, even if it actually relates to another pay reference period.

8.54 This continues to be the case after employment ends. If a deduction is made from a seafarer’s final payments, it will still be considered in the normal way to assess whether or not the seafarer is receiving NMW equivalent pay for their hours of UK work. For example, if an employer makes a deduction from a seafarer in their final pay for mandatory training undertaken throughout the employment, the deduction will still be considered in the same way as in any other pay reference period. If the deducted amount reduces the seafarer’s remuneration for their hours of UK work below the NMW equivalent rate for that pay reference period, the seafarer will be underpaid.

8.55 The Regulations apportion deductions between basic and UK additional remuneration, using the formulae in regulations 27 and 28. The apportionment depends on the proportion of the seafarer's hours of UK work compared to total hours of work.

8.56 For example:

- A seafarer works a total of 150 hours, of which 50 of those hours are hours of UK work. In a pay reference period, the seafarer’s employer deducts £100 from their salary for a uniform. Applying the formulas in regulations 27 and 28:

- The reduction in basic remuneration:

- 100 [total reduction] x (150 [total hours of work] / (150 [total hours of work] + 50 [hours of UK work])) = £75

- The reduction in basic remuneration would be £75.

- The reduction in UK additional remuneration:

- 100 [total reduction] x (50 [UK hours of work] / (150 [total hours of work] + 50 [UK hours of work])) = £25

- The reduction in additional remuneration would be £25.

Deductions or payments for the employer's or operator's own use and benefit

8.57 A deduction by the employer or operator, or a payment from the seafarer to the employer or operator, is considered to be for an employer's or operator's 'own use and benefit' where they are free to use that money in any way they wish. It does not matter whether or not:

- the employer or operator makes profit from the transaction;
- the deduction is made from gross or net pay;
- the seafarer agrees to the deduction/payment;
- the seafarer benefits from the arrangement.

8.58 For example, if the employer or operator requires a seafarer to wear a uniform, the cost of which is deducted from the seafarer's wages, the deduction will be for the employer or operator's own use and benefit. That remains the case even if the seafarer is permitted to keep the uniform at the end of their employment. The cost of the uniform would then be deducted from pay for the purposes of calculating renumeration for the purposes of determining if the NMW equivalent is being paid.

8.59 However, some deductions and payments, despite being for the employer's or operator's own use and benefit, do not reduce a seafarer's remuneration for the purpose of determining whether the NMW equivalent is being paid. These are listed in regulation 29(2):

- deductions or payments in respect of the seafarer's conduct or any other event where the worker is contractually liable (for example, a seafarer working in an onboard restaurant breaks a glass and their wages are docked to pay for the breakage);
- deductions or payments in respect of an agreed loan or advance of wages;
- deductions or payments in respect of an accidental overpayment of wages;
- deductions or payments in respect of the purchase by the seafarer of shares, stocks, bonds, share options, or a share in a partnership;
- payments (but not deductions) where the seafarer has purchased goods or services from the employer or operator (unless this purchase is made to comply with a requirement imposed by the employer or operator in connection with the employment and is not reimbursed by the employer or operator);

8.60 It should be noted that deductions made to reflect a seafarer's purchase of goods or services from the employer or operator are not included in this list, as they would still be deemed to reduce a seafarer's pay for NMW equivalent purposes.

8.61 If a seafarer chooses to purchase goods or services – from their employer or the operator – that are not in respect of an expense incurred in connection with their employment or a requirement imposed on the seafarer by the employer or operator, then the effect it will have on NMW equivalent remuneration will depend on the way any cost for this is covered.

8.62 If a seafarer chooses to pay for the purchase via a payment from the seafarer to the employer or operator (that is, the seafarer pays for the goods after they have been paid their wages), the payment will not reduce remuneration for NMW equivalent purposes.

8.63 If the same purchase is paid for via a deduction from wages then this will reduce remuneration for NMW equivalent purposes and this may bring pay below NMW equivalent. It makes no difference if the seafarer freely chooses to make the purchase and/or signs their agreement to the purchase.

Expenditure in connection with employment and living accommodation

8.64 Any deduction from a seafarer's pay by the employer or operator for the following purposes will always reduce a seafarer's remuneration for the purposes of determining whether the NMW equivalent has been paid:

- deductions as respects expenditure that is incurred in connection with their employment, or

- deductions as respects the provision of living accommodation by the employer or operator.

8.65 There is no amount that can be charged for accommodation that will not reduce pay for the purposes of calculating National Minimum Wage equivalence.

8.66 Where the expenditure or provision of accommodation is covered by the seafarer making a payment, either to the employer or operator, or a third party, this will reduce a seafarer's remuneration unless they are reimbursed by the employer or operator. Reimbursements should be made within a reasonable period of time.

Determining total hours of work: types of work

8.67 To calculate a seafarer's basic rate, it is necessary to establish their total hours of work in the pay reference period. The calculation for the total hours of work will depend on the type of work they perform and whether they are:

8.68 paid an annual salary, under a contract for a basic number of hours each year (known as salaried hours work);

8.69 paid by the hour (known as time work);

8.70 paid in any other ways (known as unmeasured work).

Salaried hours work

8.71 Salaried hours work requires all the following to apply to a seafarer:

- they are entitled under their contract to be paid for a set basic number of hours in a year;
- they are entitled under their contract to an annual salary for those basic hours;
- they are not entitled under their contract to any other payment for their basic hours other than the salary, or a performance bonus or salary premium (see below);
- they are paid not more often than weekly and not less often than monthly in equal instalments – for example, monthly, 4-weekly, fortnightly or weekly payments. Alternatively, they can be paid in monthly instalments that vary but add up to the same amount in each quarter.

8.72 If a seafarer is employed to work only during some parts of the year but is paid an annual salary in instalments throughout the year then they perform salaried hours work.

8.73 So long as the instalments remain the same, the fact that a seafarer actually works more hours in some weeks or months and less in others does not prevent them meeting the requirements of salaried hours work.

8.74 Some variations in the weekly or monthly instalments are ignored for this purpose, where paying in equal instalments may not be practicable. For example, if the variation results from:

- payment of a performance bonus;
- payment of a salary premium, such as for working on a bank holiday;
- a pay increase;
- pay for working hours in addition to the basic hours, such as separate overtime payments (See section above on “Overtime”);
- the seafarer starting or leaving part-way through the week or month.

What is a salaried hours contract?

8.75 To be a salaried hours contract, the contract between the employer or operator and the seafarer should set out:

- a basic number of hours for which the seafarer is to be paid (for example 2,000 hours in a year) and
- that the seafarer is entitled to an annual salary.

8.76 The contract does not have to show the total basic hours for a complete year but it is better to do so. However, it must be possible to precisely calculate what the total basic annual number of hours is in relation to the full year.

8.77 For example, if a contract sets out a monthly number of hours it is possible to work out the annual total by multiplying by 12. It may be slightly less obvious where a contract states a weekly number of hours, but an employer or operator may use some form of weekly multiplier, such as 52, 52.14 or 52.18 or some other formula to arrive at an annual total. A statement of weekly hours is compatible with salaried hours work, but the important thing is the employer or operator must be able to demonstrate how the basic hours for a year have been ascertained.

8.78 By way of further example, some seafarers may undertake flexible working patterns which mean that their actual working hours vary from week to week. In these cases, it should still be possible to calculate their basic annual hours, in which case if they are paid an annual amount (and the other conditions discussed above are met) they will be doing salaried hours work.

Time that counts towards total hours of work

8.79 Generally, the total hours of salaried hours work include hours where a seafarer is:

- at work and required to be at work;
- on standby or on-call at or near their place of work, unless they are at home;
- kept at their place of work but cannot work, for example because of machine breakdown;
- travelling for the purpose of working;
- training or travelling from a workplace to training.

Absences from work

8.80 If a seafarer doing salaried hours work is paid their normal salary while they are absent from work and this forms a part of their employment contract, the time of the absence counts towards the seafarer’s time worked for determining their total hours of work. For example, during rest breaks, lunch breaks, holidays, sickness absence or maternity / paternity / adoption leave.

8.81 If a seafarer’s basic hours under their employment contract do not include pay for these absences (that is, if they are not covered by the annual salary), then the hours of absence do not count towards the seafarer’s total hours of work.

8.82 For example, suppose a seafarer is contractually entitled to their full basic rate of £10 an hour for the first 6 weeks of sick leave and after 6 weeks they are entitled to be paid half-pay of £5 an hour. The hours of absence paid at their full pay rate count as part of their basic contractual hours because they are treated as if they are at work.

However, once they are paid half-pay for the absence this time paid at the reduced rate is not counted as work time.

Time that does not count towards total hours of work

8.83 The only hours that do not count towards salaried hours work are any of the following:

- hours not worked and paid at less than normal pay (see “Absences from work”) - for example - if a seafarer is paid a proportion of their normal salary, or nothing, during sick leave
- during unpaid leave - because this time is not part of their basic annual hours in their employment contract
- hours they are taking industrial action - it makes no difference whether the seafarer remains entitled to full or partial pay under their employment contract
- periods the seafarer is not working but is available for work:
- at home
- while sleeping at or near the place of work (and suitable facilities for sleeping are provided)
- hours training where the training is not required by the employer or operator and does not take place at a time when the seafarer would otherwise be working
- travelling between home and work

Calculating basic annual hours

8.84 If a seafarer only works up to their basic annual hours, the number of hours they have worked in a particular pay reference period is calculated from the number of salaried hours for each pay reference period by dividing the seafarer’s basic annual hours by the number of payments in the year. For weekly payments, basic hours are divided by 52, for fortnightly payments they are divided by 26, for 4 weekly payments they are divided by 13, and for monthly payments they are divided by 12. For any other length of pay reference period, 365 days should be divided by the number of days in the pay reference period. Basic hours are then divided by this figure.

8.85 If there were any absences in the pay reference period that reduce total hours of work (including time taking part in industrial action), these will then need to be subtracted.

Excess hours worked

8.86 Once a seafarer doing salaried hours work has worked hours in excess of their basic annual hours in the calculation year then it is necessary to check that all the excess

hours are taken into account when calculating their total hours of work for the purposes of determining their basic rate.

8.87 First, work out whether the seafarer has worked more than their basic hours in the calculation year.

8.88 Example calculation 1

- A seafarer has a contract which meets the requirements of salaried hours work in the Regulations. Their contract is to work 2,040 basic hours in the year, for which they are paid an annual salary of £18,000, in equal monthly instalments of £1,500. Their calculation year is 1 April to 31 March.

- The seafarer does not work any excess hours in April, and there are no absences that reduce the total hours of work. The total hours of work in the April pay reference period are 2,040 / 12 = 170. As there are no excess hours, no further calculations are necessary.

- Their basic rate for April is therefore £1,500 / 170 = £8.82 an hour.

- However, once those 2,040 hours have been worked (including any hours that count as basic hours when the worker is absent), the extra unpaid hours will need to be taken into account for the purpose of determining the total hours of work and calculating the seafarer's basic rate.

- Please note that the individual calculations to identify the total hours of work in each pay reference period may not result in exactly the same figure as the total worked in the year. This is caused by a rounding effect due to the variation in the number of days in each calendar month.

8.89 Example calculation 2

- A seafarer's calculation year is 1 April to 31 March and their contract specifies basic annual hours of 2,040 for which they are paid £18,000 per annum (£1,500 per month). The basic hours per month are 170 (2,040 divided by 12).

- The seafarer exceeded their annual contracted basic hours part-way through the February pay reference period. In order to calculate the total hours of work for February and March, the following steps need to be followed:

- 1. Identify the actual day when the basic hours are exceeded. In this example, say the seafarer reached 2,040 basic hours for the calculation year on 11 February.

- 2. For the 10 days before the basic hours were exceeded, calculate the hours as follows:

- divide 10 days in the pay reference period by 365 days in a full year (include non-working days): 10 / 365 = 0.027

- multiply the annual basic hours (2,040) by the answer above: 2,040 x 0.027 = 55.9 hours

- 3. Repeat step 2 for the remaining days in the pay reference period after the basic hours were exceeded (in this example 18 days, as it is not a leap year), resulting in 2,040 x 0.049 = 100.6 hours

- 4. Identify the actual hours worked in February after the basic hours were exceeded - in this example this is the hours worked from 11 February to the end of February, say 70 hours.

- 5. Add together these 3 sets of hours 55.9 + 100.6 + 70 = 226.5 hours. This is the total hours of work for the February pay reference period. Therefore, the basic rate for February is £1,500 / 226.5 = £6.62 per hour.

- 6. For March the seafarer works (say) 170 excess hours (all hours worked in March are 'excess' hours as the basic hours are reached in February). These would be added to the 170 basic contractual hours for March (calculated by dividing the 2,040 annual hours by 12). Therefore, the total hours of work for the March pay reference period are 340, and the basic rate is £1,500 / 340 = £4.41 per hour.

Calculation year

- A seafarer's calculation year depends on how frequently they are paid (e.g. monthly or weekly).

- If they start on the first day of a month, say 1 May, their calculation year will be 1 May to 30 April in the following year while continuing in the same job.

- If they start part way through a month, say 15 May, their calculation year will be 15 May to 31 May of the following year and then starting on 1 June and ending on 31 May each subsequent year while continuing in the same job.

- For seafarers paid other than monthly (that is, weekly or fortnightly) – for example – if they start on 22 May their calculation year will be 22 May in year 1 until 21 May the following year. It will then start on 22 May each subsequent year while continuing in the same job.

Contract changes

8.90 Where a seafarer does salaried hours work and their contractual hours are increased or reduced at some point in the calculation year, this will affect whether and when the worker works hours in excess of their basic hours. There are 2 methods for calculating the seafarer's hours in this situation. Which of them applies depends on the circumstances.

8.91 The first method is used to identify what the basic hours are before the contract is changed. In this case, the basic hours are the same as the hours that were fixed before the change takes place.

8.92 For example, an annual contract of 2,040 hours runs from April to March, but the contract's hours are reduced to 1,900 hours from 1 November. If the basic hours are calculated any time before November, the number is 2,040.

8.93 The second method is used to identify what the basic hours are after the contract is changed.

8.94 Example scenario - to identify basic hours after a contract is changed

8.95 An annual contract of 2,040 hours runs from 1 April to 31 March, but the contract's hours are reduced to 1,900 from 1 November. In order to identify the basic hours from 1 November onwards, it is necessary to get the right proportion of annual hours in the right part of the year.

8.96 To do this:

- Calculate the number of days from the date of the change to the end of the calculation year, for example from 1 November there are 151 days remaining of the calculation year.
- Divide that number by 365 and multiply by the new contractual hours (1,900): 151 / 365 x 1,900 = 786 hours.
- Calculate how many days there were from the start of the calculation year to the day before the contract was changed: 365 - 151 = 214.
- Divide the figure from step 3 by 365 and multiply by the previous contractual hours (2,040): 214 / 365 x 2,040 = 1,196 hours.
- Add together the figures from steps 2 and 4.
- From 1 November onwards, the basic hours are: 786 (step 2) + 1,196 (step 4) = 1,982 hours.
- If the contractual hours are changed more than once during the calculation year, the same method is used to get the right proportion of hours in the right part of the year.

8.97 Termination of employment

8.98 If a seafarer who does salaried hours work leaves before the end of the calculation year, they may have worked hours in excess of the basic hours for the part of the year for which they were employed. In such circumstances, the excess hours should be treated as having been worked in the seafarer's final pay reference period which will have the effect of increasing the total hours of work and reducing the seafarer's basic rate for that period.

8.99 For example, a 29-year-old seafarer has a contract to work 2,040 hours a year. That is 170 hours per month (2,040 / 12). They are paid an annual salary of £18,000, in equal monthly instalments of £1,500. They leave after 6 months, having worked 1,150 hours.

8.100 To calculate the hours treated as worked in the final pay reference period:

- 1. Work out how many basic hours the seafarer should have worked under their contract: 6 months x 170 hours = 1,020 hours.

- 2. Calculate their excess hours: 1,150 - 1,020 = 130 hours.

- 3. Determine the total hours the seafarer is treated as having worked in their final pay reference period by adding together their basic hours and the excess hours: 170 + 130 = 300 hours.

- The seafarer's basic rate for the final pay reference period is £1,500 / 300 hours = £5 per hour.

Time Work

What is time work?

8.101 If a seafarer's contract provides that they are entitled to be paid according to the number of hours they are at work, that work is time work. The hours of work might be constant or they might vary each day. Alternatively, the seafarer may be on a contract for a week or a month to do a particular job and they are paid for the hours done each week or month. That is also time work. Generally, any seafarer whose pay varies depending on the number of hours they work is likely to be performing time work.

8.102 A seafarer's total hours of time work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations.

8.103 The hours of work that count as time work include:

- Hours when a seafarer is working.

- Hours when a seafarer is available, and required to be available, at or near their place of work for the purposes of working (but not at home). This only includes hours when the seafarer is awake for the purposes of working, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.

- Hours spent training, when the seafarer would otherwise be doing time work.

- Hours when a seafarer is travelling, when they would otherwise be working unless the travel is between a seafarer's home/temporary residence and a place of work or a place where an assignment is carried out.

For time work, the time that does not count as working time includes any time spent:

- away from work – even if they are paid for that time – including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action

- travelling between home and work (unless the seafarer works whilst travelling) – regardless of whether the seafarer has a fixed place of work

Unmeasured work

8.104 Work is unmeasured work if it is not salaried hours work or time work. Unmeasured work could meet some of the conditions of time work, but not all the conditions (for example they might not be entitled under their contract to be paid according to the number of hours they are at work). As it would also not be salaried hours work (the worker is not paid an annual salary), it must be unmeasured work.

8.105 A seafarer's total hours of unmeasured work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations.

8.106 The hours of work that count as unmeasured work include:

- hours when a seafarer is working
- hours when a seafarer is available, and required to be available, at or near their place of work for the purposes of working (but not at home). This only includes hours when the seafarer is awake for the purposes of working, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.
- hours spent training, when the seafarer would otherwise be doing unmeasured work
- hours when a seafarer is travelling, when they would otherwise be working unless the travel is between a seafarer's home/temporary residence and a place of work or a place where an assignment is carried out.
- For unmeasured work, the time that does not count as working time includes any time spent:
- away from work – even if they are paid for that time – including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action
- travelling between home and work (unless the seafarer works whilst travelling) – regardless of whether the seafarer has a fixed place of work

Determining hours of UK work

8.107 To calculate a seafarer's UK additional rate it is necessary to establish their hours of UK work in the pay reference period. The method of calculating hours of UK work is the same for all seafarers, irrespective of the type of work they are doing for the purposes of calculating the total hours of work.

8.108 A seafarer's hours of UK work in a pay reference period can be identified by recording every hour worked, or treated as worked under the Regulations in the UK or its territorial waters.

8.109 The hours of work that count as hours of UK work include:

- Hours when a seafarer is doing UK work
- Hours where a seafarer is available, and required to be available, at or near a place of work for the purposes of doing UK work (but not at home). This only includes hours where the seafarer is awake, even if a seafarer by arrangement sleeps onboard the ship and the employer or operator provides suitable facilities for sleeping.
- Hours spent training when they would otherwise be doing UK work.
- Hours when a seafarer is travelling, where they would otherwise be doing UK work, unless the travel is between a seafarer's home/temporary residence and the place of work or a place where an assignment is carried out.

8.110 For UK work, the time that does not count as working time includes any time spent:

- away from work – even if they are paid for that time – including rest breaks, holidays, sick leave, maternity/paternity/adoption leave, industrial action
- travelling between home and work (unless the seafarer works whilst travelling) – regardless of whether the seafarer has a fixed place of work

Currency conversion

8.111 A seafarer may be paid in a currency other than GBP. In that case, an employer or operator looking to pay the NMW equivalent must make sure that the seafarer's pay would meet the NMW equivalent hourly rate when converted into GBP. Employers should assure themselves that they have used a reasonable exchange rate and may want to refer to: Exchange rates from HMRC in CSV and XML format - GOV.UK (www.gov.uk)

Chapter 7: Enforcement

Provision of information by operators

9. 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.

9.1 This may include information relating to the service and information relating to the people working on ships providing the service and their remuneration.

9.2 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.

9.3 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 fails 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

9.4 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.

9.5 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.

9.6 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.

9.7 Any notice given may require the information to be provided in a manner, and within a time period, specified in the notice.

9.8 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

9.9 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.

9.10 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.

9.11 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 this section, 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 this section. 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

9.12 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.