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# Harbours (Seafarers' Remuneration) Bill Consultation

### About Us

The Trades Union Congress (TUC) is the voice of Britain at work. We represent over 5.5 million working people in 48 unions across the economy. We support trade unions to grow and thrive, and we stand up for everyone who works for a living.

## Overview

The no-notice sackings of 800 seafarers by P&O Ferries earlier this year was a demonstration of the weakness of UK labour law in the face of an employer with substantial financial resources.

Despite a robust campaign by unions, the operator was able to effectively buy its way out of UK employment law and pay little regard to requirements on collective consultation with trade unions and notification to government ministers.

P&O's motivation was clear: to replace a unionised workforce on decent wages that had been negotiated between employers and workers with a group of workers employed via employment agencies on wages as little as £2 an hour – well below the UK minimum wage.

The measures in this consultation focus on the expansion of the minimum wage for seafarers.

The TUC welcomes this. If implemented with effective enforcement and in a manner that reinforces collective agreements, it could provide some additional protection for vulnerable workers and reduce, to a limited extent, the financial gains sought by unscrupulous operators attempting to employ the cheapest labour.

Careful drafting of the new legislation must be undertaken to ensure that it is compatible with existing maritime legislation, including National Minimum Wage (Offshore Employment) Order 1999 as amended in 2020 and does not leave open loopholes for operators seeking to circumvent its aims.

Nevertheless, on their own these proposed changes will not be sufficient to stop other companies repeating the actions of P&O Ferries.

This would require a range of actions including a significant bolstering of collective consultation rights in relation to redundancies.

The intensity of work and the importance of safety on some of the busiest shipping routes in the world requires a well-trained workforce with decent conditions.

Ministers should make ensuring this is the case a priority.

## Employment Protection (question 7-8)

The minimum wage equivalent must be set in a manner that best protects vulnerable seafarers and direct employment, without undermining collective bargaining arrangements in the ferry or any other sector of the shipping industry.

The TUC believes that the minimum wage equivalent should be set for each route at the level of the country with the highest minimum wage, including on routes calling at multiple UK and/or international ports. Where the route includes countries without a minimum wage (most commonly those with strong collective agreements), the government should hold discussions with unions (RMT and Nautilus International) to determine the most appropriate rate.

But it is crucial that such a minimum wage is not regarded as the effective pay rate on such routes. The Seafarer Welfare Framework Agreement being discussed by the trade unions and progressive employers (Stena Line and DFDS) should establish minimum rates of pay, based on the collective bargaining agreements RMT and Nautilus have with DFDS and Stena Line. These agreements should be honoured above the minimum wage, and minimum wage levels should not prejudice collective bargaining agreements.

The Ratings union (RMT) and the Officers union (Nautilus International) should both have permanent seats on the Seafarer Protection Forum established by the Framework Agreement.

The NMWe should apply to overtime worked by seafarers not just the basic first 48 hours of work per week. The NMWe should also be the rate used for calculating sick pay, pensions, and other social security support for seafarers, should there be no collective bargaining agreement in place with the UK maritime unions.

For the minimum wage to be effective, no offsets should be permissible for food (illegal under the Maritime Labour Convention) or accommodation onboard. These are established elements of the terms and conditions of seafarers and allowing employers to access the accommodation offset, for example, would completely undermine the new wage floor.

The government should also be pursuing more general improvements to employment protections, as well as increased training, for seafarers with a view to ensuring a recovery in direct employment for UK resident Ratings and Officers in a sustainable fashion.

An RMT survey of seafarer Ratings conducted in February found that over 60% of Ratings resident in the UK are over 45 years old. Meanwhile, the UK Seafarer statistics published by the DfT in the same month found that only 11.5% of over 82,000 Ratings jobs in the UK shipping industry are held by UK resident seafarers.

A crucial element in terms of general improvements to employment protections for seafarers would be the extension of sectoral collective bargaining to the ferries and maritime sector as a whole.

Further reforms to protect employment rights and increase domestic employment are also essential. These should include:

- Seafarers and all land-based workers should have recourse to a pre-emptive legal action against employers seeking to infringe their employment rights. This should include a right to seek interim relief from an employment tribunal to halt a dismissal process where there have been serious and deliberate breaches of the law.
- Strengthening the provisions of the Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 to require employers to consult UK trade unions and the Secretary of State, regardless of the flag of the vessel in the event of major redundancies and to deepen the application of TUPE protections in the shipping industry.
- This should include clarification of the Trade Union and Labour Relations (Consolidation) Act 1992 to make it clear that failure to notify the relevant authorities of redundancy plans under s193A can lead to an employer being liable to a conviction and fine under s194.
- End all forms of discrimination against UK and international seafarers, including nationality-based pay discrimination which would finally and fully prohibit Section 9 of the Race Relations Act 1976 in relation to the employment of non-EEA seafarers recruited outside the UK to work on UK shipping routes.
- Introduce stronger regulation of crewing agents that supply (and often employ) seafarers to the UK shipping industry, on terms and conditions which undermine the employment and training of UK resident seafarers and the UK economy.
- Close the loophole which allows seafarers in the offshore renewable supply chain to be paid below the UK NMW on routes beyond the 12 nautical mile territorial water limit but within the UK Exclusive Economic Zone.

## Scope (question 9-12)

All ferries should come under the scope of this legislation, including Ro-Pax, Ro-Ro and Lo-Lo ferries (including those handling unaccompanied containers and other unaccompanied freight).

Unscheduled as well as scheduled services should also be covered.

Short sea ferries, cargo and bulk carriers and domestic cruise ferries should also be in scope but those working deep sea routes should not be.

The Bill must also clarify the arrangements for application, enforcement and monitoring of seafarer employment and maritime safety standards on ferry routes from UK ports to Crown Dependencies and British Overseas Territories.

## Enforcement (questions 13-20)

Employment rights are ineffective without well-resourced enforcement. The scale of non-compliance with the minimum wage and other employment rights is staggering, even on land.

Maritime law requires specialist knowledge and enforcement will require labour market inspectors to have the expertise, resources, powers and will to ensure seafarers are paid at least the minimum wage. The Maritime and Coastguard Agency have the maritime knowledge but do not have responsibility for enforcing UK employment law in relation to seafarers.

Port authorities are not best placed to carry out detailed investigations into minimum wage compliance. While we believe ports should be made to take on some responsibility, it is against their interests to audit the employment arrangements of their customers. In some cases, there is also a conflict of interest, where a port authority is also a ferry operator, and would be in receipt of commercial information about its competitors.

It is vital that the Maritime and Coastguard Agency (MCA), Director of Labour Market Enforcement (DLME), HMRC and any future Single Enforcement Body have the access and powers to make sure enforcement activity is effective. They should be given full compliance and enforcement roles under statutory agreements with port authorities. This would likely involve HMRC having the right of entry to ports and HMRC will undoubtedly require a significant increase in its staff of inspectors. The DLME should have a role in overseeing and evaluating the new regulatory regime. Specialist training should be provided to HMRC inspectors on maritime minimum wage enforcement.

In terms of unintended consequences, the legislation creating Freeports does not change the status or purpose of Statutory Harbour Authorities (SHAs) and other port authorities responsible for operations and management. But there is a significant risk that the different jurisdictional status of Freeports compared to Trust and other ports could lead to a two-tier enforcement landscape should the Harbours Bill become law. The Bill put before Parliament should explicitly

refer to the equal application of this legislation to the whole ports sector, including maritime Freeports. This is significant as there are several ferry operators within the existing Freeport network announced by the Chancellor in March 2021, as the table below shows:

### Examples of Ferry Operators in Freeports (England)

| Location | Ferry Operators | Routes |
| --- | --- | --- |
| Teesside | P&O Ferries | Teesport-Rotterdam |
| Humber | P&O Ferries; DFDS; Cobelfret | Hull-Rotterdam; Killingholme-Hook of Holland; Killingholme-Rotterdam |
| Thames | P&O Ferries; Cobelfret | Tilbury-Zeebrugge; Purfleet-Zeebrugge; |
| Liverpool | P&O Ferries; Stena Line | Liverpool-Dublin; Liverpool-Belfast |
| Plymouth | Brittany Ferries | Plymouth-Roscoff; Plymouth-Santander |
| Solent | Brittany Ferries; Condor Ferries | Portsmouth-Santander; Portsmouth- |

Brittany Ferries has a French flagged fleet that is covered by collective bargaining agreements with the maritime trade unions in France. They will not be affected by the legislation, other than simple proof that those collective bargaining arrangements for the crew put them in full compliance with the provisions of the Bill.

Collective bargaining arrangements will, however, be a feature of the Government's discussions of bi-lateral agreements with the French, Belgian, Spanish, Irish, Dutch, Danish and German Governments which underpin the Bill. The TUC believes that the Government should be more transparent with trade unions and the public on the progress it is making in these bi-lateral discussions, given their importance to this legislation and its early implementation.

It is essential that P&O Ferries' undercutting of the remaining major employers of UK seafarers, particularly DFDS and Stena Line, is reversed as early as possible. A summer price war between ferry operators, particularly in the Irish Sea and on the Dover straits could be catastrophic for UK resident seafarers and maritime skills in the UK.

## Compliance Process (question 13-20)

Port authorities (including Statutory Harbour Authorities, Competent Harbour Authorities and the Secretary of State through Trust Ports) should be empowered to verify and enforce NMWe and wider employment conditions in the ferry sector.

However, compliance and enforcement responsibilities must clearly sit with the Maritime and Coastguard Agency and HMRC NMW Enforcement Team. Additional resources, including training in the maritime sector for HMRC NMW compliance officers should be made available by the Treasury.

Regular unannounced visits to the vessels in scope should be undertaken to make sure that operators cannot prepare for all compliance inspections.

There should also be a clear certification process with the port authorities issuing them to operators, following appropriate verification and evidence that the operator is either compliant or non-compliant, with the appropriate enforcement actions listed.

Funds raised through the proposed surcharge on repeat offenders should be re-invested in UK seafaring, specifically the training of UK resident Ratings.

Vessel detentions for repeat failures to comply with the Bill's provisions would serve as a stronger and clearer deterrent than suspending access to a port which may harm the welfare of seafarers and passengers. It would also be more consistent with the deterrents contained in the mandatory Port State Control process for flag of convenience registered ferries and other ships regularly working from UK ports on international routes.

If suspension of access were to be introduced, exemptions should be backed by the clear intention to detain a non-compliant vessel when it reaches port in specified circumstances.

Other exemptions would be for carrying out crew changes and re-stocking food and water and medical supplies, as long as the vessel is not carrying out commercial operations. It should be understood that this access for a non-compliant vessel would only be permitted to protect seafarers' welfare.

The Bill also needs to contain provisions which prevent operators of multiple routes from reducing their exposure to compliance inspections by moving their fleet between different UK ports to reduce the chances of being inspected or being found to have repeatedly breached the legislation.

The onus on evidencing compliance should be on the ship operator, the ship owner, and the employer, if they are different. This is important, otherwise the crewing agent/third party employers of P&O Ferries, Irish Ferries and others who the Government are targeting with this legislation will not be directly affected by the Bill.

Starting with the lowest paid Ratings grades, the information should be submitted to the harbour authority and the Maritime & Coastguard Agency (MCA). The MCA should then share the relevant cases with HMRC and other labour market regulators.

Contracts of employment/SEAs, records of hours worked and rest and confirmation of payment or bank transfer should be required as evidence from the operator, shipowner and the employer.

A comprehensive enforcement and compliance model combining random checks, risk-based selection and intelligence is needed. Port and Operator assistance in providing regular access to the MCA, HMRC and trade unions for the purposes of regulating the conditions for seafarers working onboard should also be explicitly encouraged in the legislation.

The trade unions and inspectors from the International Transport Workers Federation (ITF) clearly have a role to play to verify and enforce the NMWe rates applicable on ferries working between UK and international ports.

The International Ship and Port Facility Security (ISPS) Code should also be used, under the Seafarer Welfare Framework Agreement to enhance access and to give port authorities reassurance that these new powers are operating smoothly and fit within the existing statutory framework.

Similarly, the UK's continued access to the European Maritime Safety Agency's THETIS database should be used to assist in identifying those ferries and other vessels which are in-scope of the legislation and shape the compliance and enforcement regime accordingly.

UK trade unions should be afforded a clear and specific role in all compliance and enforcement work connected with this Bill.

The expertise and independence of the trade unions on seafarer employment matters is crucial to delivering an effective inspection regime. This will be particularly important in areas of potential conflict of interest between operators, port owners and rival ferry operators. This includes where an operator is also owner of the port facility which rival operators use.

## Impact (question 21-28)

The TUC believes that this Bill will have an overall positive effect on all seafarers in the ferry industry, which is to be welcomed. But it must also implement wider reform to seafarer employment practices in the ferry industry, in addition to NMWe.

The risk of the use of the accommodation offset is a potential unintended consequence which the Bill must rule out.

Again, nothing in the Bill should prejudice existing or future sectoral collective bargaining arrangements.

A consistent reporting mechanism from operators to aid effective compliance and enforcement will be an essential test of the impact of this legislation for seafarers.

P&O revealed a £5.50 average wage in evidence to the Transport Select Committee on 24th March. Ratings are likely to be paid below the average. The proportion of seafarers paid below the UK NMW is likely to be above 50% on the vessels in scope because Ratings grades tend to be paid these lower wages and they make up more than half of the crew numbers on these and every other class of vessel over 500 gross tonnage.