



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

16th Report of Session 2022–23

Seafarers’ Wages Bill [HL]: Government Response

Ordered to be printed 25 October 2022 and published 25 October 2022

Published by the Authority of the House of Lords

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Sixteenth Report

SEAFARERS' WAGES BILL [HL]: GOVERNMENT RESPONSE

1. We considered this Bill in our 10th Report of this Session.¹ The Government have responded by way of a letter from Rt Hon. Lucy Frazer KC MP, Minister of State for Transport at the Department for Transport. The response is printed at Appendix 1.

¹ *10th Report*, Session 2022–23 (HL Paper 65).

APPENDIX 1: SEAFARERS' WAGES BILL [HL]: GOVERNMENT RESPONSE

Letter from the Rt Hon. Lucy Frazer KC MP, Minister of State for Transport at the Department for Transport, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

I write further to my letter of 12 October, to respond to the DPRRC's report on the Seafarers' Wages Bill. I repeat my thanks to the Committee for its consideration of the proposed legislation and its recommendations, to which I will respond in turn.

Clause 3(4)(a)

The power in clause 3(4)(a) gives the Secretary of State power to make regulations that make provision restricting the circumstances in which a harbour authority may exercise its power under clause 3(1) to request a National Minimum Wage-equivalent (NMWe) declaration.

This power was sought in order to provide flexibility to deal with unknown circumstances where it might be inappropriate for harbour authorities to request declarations from operators that would otherwise come into scope. It was emphatically not intended that this power should be used fundamentally to alter the scope or application of the Bill.

Having considered the report, and following the discussion at Grand Committee, we have tabled an amendment to clause 3(4)(a) to remove the power completely. Upon reflection of the points raised by noble Lords, we are satisfied that the removal of this power would not have any impact on the operability or policy intention of the Bill, but would ensure that there is no potential for the application of the Bill to be modified without proper parliamentary scrutiny.

Clause 11(2)

Clause 11(2) allows the Secretary of State to give directions to harbour authorities requiring them:

- to exercise any of their powers under the Bill;
- not to exercise any of their powers under the Bill; or
- to exercise any of their powers under the Bill in a particular way.

These powers of direction form an important part of the compliance mechanism under the Bill. Without the power of direction given to the Secretary of State, there will be no means of correction if the harbour authorities do not exercise their powers under the Bill, or if they exercise their powers inappropriately.

I would like to reassure the Committee that the power is not intended to have general effect to allow the Secretary of State simultaneously to direct all harbour authorities to exercise, or not to exercise their powers under the Bill, or to exercise them in a particular way. Nor is it intended to modify the character of the Bill itself by means of direction.

The policy intention is that this power would only be used in the following circumstances:

- (i) to direct a harbour authority to request a national minimum wage equivalence declaration where it appears to the Secretary of State that it has the power to request a declaration under clause 3(1), but has not done so;
- (ii) to direct a harbour authority to impose a surcharge where circumstances are such that it is entitled to do so under clause 7(2), but it has not done so;
- (iii) to direct a harbour authority to refuse access to a harbour where a surcharge has been imposed on an operator but they have not paid it;
- (iv) to impose a surcharge of an amount specified in the direction instead of the amount determined by the harbour authority's tariff;
- (v) to direct a harbour authority not to refuse access to a harbour, or to set conditions on the refusal of access (for example with respect to timings), where the Secretary of State considers that the refusal of access would cause damage by disrupting key passenger services and supply chains critical for national resilience.

We have carefully considered the points made by the Committee, but removing this power would seriously damage the effectiveness of the Bill by leaving government unable to enforce the requirements of the Bill should harbour authorities not discharge their functions, or do so inappropriately, and would, for example, risk government being unable to prevent harbour authorities from refusing access to services that are critical to national resilience. It would also alter the relationship between harbour authorities and the Government, which has been subject to consultation. Therefore, any changes to this power would need to be subject to consideration of stakeholder views.

Again, I thank you for your recommendations and am happy to continue engagement with the Committee as the Bill continues its passage.

25 October 2022

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.