

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT NATIONAL MINIMUM WAGE
(OFFSHORE EMPLOYMENT) (AMENDMENT)
ORDER 2020

Monday 22 June 2020

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

- | | |
|---|---|
| † Anderson, Stuart (<i>Wolverhampton South West</i>)
(Con) | † Rimmer, Ms Marie (<i>St Helens South and Whiston</i>)
(Lab) |
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Sultana, Zarah (<i>Coventry South</i>) (Lab) |
| † Cummins, Judith (<i>Bradford South</i>) (Lab) | Thompson, Owen (<i>Midlothian</i>) (SNP) |
| † Davies-Jones, Alex (<i>Pontypridd</i>) (Lab) | † Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Farris, Laura (<i>Newbury</i>) (Con) | † Tolhurst, Kelly (<i>Parliamentary Under-Secretary of State for Transport</i>) |
| † Holmes, Paul (<i>Eastleigh</i>) (Con) | † Trott, Laura (<i>Sevenoaks</i>) (Con) |
| † Huq, Dr Rupa (<i>Ealing Central and Acton</i>) (Lab) | Yohanna Sallberg, <i>Committee Clerk</i> |
| † Kane, Mike (<i>Wythenshawe and Sale East</i>) (Lab) | |
| † Mayhew, Jerome (<i>Broadland</i>) (Con) | |
| † Millar, Robin (<i>Aberconwy</i>) (Con) | |
| † Pawsey, Mark (<i>Rugby</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 22 June 2020

[STEWART HOSIE *in the Chair*]

Draft National Minimum Wage (Offshore Employment) (Amendment) Order 2020

5 pm

The Chair: Before we begin, may I remind Members about the social distancing regulations? This room has been assessed to hold 23 people, with 15 in the main part and five in the Public Gallery. The spaces available for Members are already marked; unmarked spaces must not be occupied. The usual seating conventions for Government and Opposition Members do not apply for this sitting, by and large. I ask those Members sitting at the back to project very clearly if they speak. The proceedings are being broadcast over the internet on parliamentlive.tv, and *Hansard* colleagues will be grateful if you could send any speaking notes to hansardnotes@parliament.uk.

5.1 pm

The Parliamentary Under-Secretary of State for Transport (Kelly Tolhurst): I beg to move,

That the Committee has considered the draft National Minimum Wage (Offshore Employment) (Amendment) Order 2020.

It is a pleasure to serve under your chairmanship, Mr Hosie. The draft order will amend article 2 of the National Minimum Wage (Offshore Employment) Order 1999, and extend the provision of the National Minimum Wage Act 1998 to all seafarers working in UK territorial waters or in connection with certain offshore activities in the UK sector of the continental shelf, except where they are working on a ship exercising the rights of innocent passage or of transit passage, as defined in the United Nations convention on the law of the sea 1982. In simple terms, the purpose of the order is to extend the National Minimum Wage Act to provide greater eligibility for those seafarers working domestically, enhancing the rights and legal protection already enjoyed by most UK workers.

In 2017, a working group encompassing Government and industry was formed to explore this issue, which had been raised by industry stakeholders for more than 10 years. The working group was chaired by the Department for Transport, with policy and legal representation from the Department for Business, Energy and Industrial Strategy, the Foreign and Commonwealth Office and Her Majesty's Revenue and Customs. Also represented were the maritime unions, the National Union of Rail, Maritime and Transport Workers and Nautilus International, and the UK Chamber of Shipping, as well as individual shipping companies. This statutory instrument reflects the recommendations of the working group, that the existing legislation should be amended to extend the protection of the national minimum wage to all seafarers on any vessel working domestically in UK territorial waters, the UK continental shelf or the exclusive economic zone.

The 1998 Act provides, under section 40, that an individual employed to work on board a ship registered in the United Kingdom is eligible for the minimum wage, provided that the person is ordinarily resident in the United Kingdom and their employment is not wholly outside the United Kingdom. In this context, the reference to the United Kingdom does not include UK territorial waters or areas of the sea beyond UK territorial waters. A seafarer, therefore, cannot be eligible for the national minimum wage under section 40 if employed wholly in such waters.

The specific link to the UK flag means that it is possible to negate the protection provided in section 40 of the Act by simply flagging a vessel with another register. It might also be a deterrent to flagging with the UK. Finally, it is noted that for a worker employed ashore, the criteria are that they are simply working or ordinarily working in the UK, and there is no residency requirement.

The 1999 order extended the National Minimum Wage Act to offshore employment of certain kinds, but it is very restricted because it does not extend the Act to cover employment on a ship in the course of navigation, or on a ship engaged in fishing or certain dredging activities. The exception for employment on ships in the course of navigation is especially wide.

The purpose of the draft order is to implement the working group's recommendations, as far as that applies to the territorial waters and activity connected to the offshore sector in the UK continental shelf, by amending article 2 of the 1999 national minimum wage order. With respect to the continental shelf, we are extending the provision only to seafarers employed in support of certain offshore activities, replicating the existing legislation for offshore workers. The employment of seafarers supporting the UK offshore sector is directly related to activity that is licensed by and explicitly linked to the UK. It will not apply to other shipping activity in the UK continental shelf or to vessels undertaking international voyages.

The formation of the working group was well received by UK social partners and there was positive discussion about the extension of the eligibility of the national minimum wage. The UK social partners were instrumental in steering the discussion in that forum and the Government have been fully engaged with them throughout. The Committee should note that the Chamber of Shipping is not opposed to the concept of the national minimum wage. It stated in the working group that many seafarers who work domestically in the offshore sector were paid salaries equal to or greater than the minimum wage. However, its opinion was that operators could seek to recover, from elsewhere in their employment model, any additional costs that result from the amendments, by reducing the number of British seafarers already on salaries higher than the minimum wage or by relocating elsewhere to avoid the legislation.

That argument was not accepted by the other members of the working group, and it is noted that similar objections were made by shore-based industry when the original Act was drafted. We believe that seafarers who work for operators that relocate would still satisfy the requirements set out in the draft order and would meet the conditions set out with respect to employment in the offshore sector. As a result of the amendments made by the draft order, there will no longer be a wide exception

in the 1999 order for employment in connection with a ship in the course of any kind of navigation, or for workers on fishing vessels or dredgers. Instead, there will be a much narrower exception covering only individuals employed for the purposes of activities on a ship exercising the “right of innocent passage” or the “right of transit passage”.

In the amended order, the “right of innocent passage” and the “right of transit passage” are defined by reference to the United Nations convention for the law of the sea. Article 19 defines a vessel’s passage through a state’s territorial sea as being innocent if it is not prejudicial to the peace, good order, or security of the coastal state.

Article 18 defines “passage” for this purpose. It means navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility. Passage must be continuous and expeditious. Passage does not include stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

The amendments made by this draft order mean that the 1999 order will apply the Act to a range of individuals not currently covered by the Act. For example, an individual seafarer employed on a ship engaged in a purely domestic voyage in UK territorial waters may, in practice, not meet the conditions in section 40—for example, because the ship is not a UK-registered ship—and will currently not be covered by the 1999 order because of the wide exception for employment on ships in the course of navigation.

The narrowing of the exception by this order means, in particular, that workers on all fishing vessels in UK territorial waters, workers on dredgers in UK territorial waters and the UK sector of the continental shelf, and other seafarers working domestically territorial waters will be entitled to the national minimum wage, irrespective of where the vessel on which they are employed is registered. As a result of the draft order and section 1 of the Act, many workers will become entitled to the national minimum wage during the course of an ongoing pay reference period. The entitlement will apply in respect of all work done from the date on which the draft order comes into force.

Specific provision about employment outside the UK is made by section 40 of the Act and the 1999 order made under section 42. The amendment will allow HMRC to focus enforcement on vessels working domestically. The UK does not have flag restrictions—the flag of the state in which the vessel is registered—for vessels operating domestically in the UK. Section 40 contains a requirement that the vessels on which a seafarer is working must be registered with the UK in order for the seafarer to be entitled to the minimum wage under that section. The amendments to the 1999 order extend eligibility for the national minimum wage under that order, irrespective of where the vessel is flagged, and will extend the protections to all vessels, which will benefit more seafarers working in the UK domestic trade.

The first condition for eligibility under the 1999 order is that an individual is in offshore employment. The second condition is that they work or ordinarily work in

UK territorial waters or the UK sector of the continental shelf. There is no requirement in the 1999 order that the individual must be ordinarily resident in the UK, that the vessel on which they work must be a UK-registered ship or that they must be employed to some extent in the UK.

In particular, the reference to a ship in the course of navigation is wide, covering navigation for any purpose, domestic or otherwise, and irrespective of where the ship has set out from or is headed. Therefore, although the 1999 order applies the Act to offshore workers such as those working on oil and gas rigs or offshore renewable installations, it does not currently apply the Act to seafarers more generally.

The 1999 order is without prejudice to section 40, which operates in parallel, but, as I have explained, section 40 has significant limitations. The proposed amendments will align the protections for all seafarers working within the UK with those who work ashore. I commend the order to the Committee.

5.12 pm

Mike Kane (Wythenshawe and Sale East) (Lab): I congratulate the Minister on getting through all those legal niceties. It is a pleasure to serve under your chairmanship, Mr Hosie. I enjoy our long conversations, sometimes into the evening, about your fanaticism for Dundee United. We share a similar passion, as your preferred English premiership team is Manchester City, one of the finest teams to grace the land or the world. I hope I have not ruined your career in the Scottish National party by outing you as having a preferred English team.

There is no doubt that the national minimum wage was one of the last Labour Government’s crowning achievements. However, the legal complexities of maritime meant that it was not introduced on our seas. I thank the Department for Transport, officials, Government Members who worked on it, and the legal working group for creating this legislation that sets a minimum wage at sea.

The Labour party is pleased to support the draft order, but it is only a small step in the right direction. It applies only to ratings and seafarers who are going from port to port in the UK. For instance, some hon. Members may not be aware that it does not cover the Dover to Calais route. Although it is a small step, it is important to protect UK seafarers from low-cost crewing models, which have directly contributed to UK ratings being systematically replaced in the last 30 years. UK seafarers now make up just 19% of seafarers in the UK shipping industry, which is a record we should be ashamed of. We should also be ashamed of importing people from all over the world to work for less than the minimum wage and serve British citizens on ships from this country.

I congratulate the RMT, which, as the Minister said, served on the working group, on its tireless work in campaigning since the late ’90s for national minimum wage legislation to cover seafarers employed on ships working from UK ports. Through its campaign and representation on the legal working group, it should be rightly proud of championing the rights of its members.

Scandalous levels of low pay are used by some operators where they can bring in foreign labour to undercut the British workforce that is already there. It is troubling to see signs that some operators may be using the coronavirus

[Mike Kane]

pandemic and the Treasury's job retention scheme, which we welcome, to restructure their workforces and further reduce the number of UK seafarers.

As highlighted by the legal working group, some businesses are doing the right thing: treating their workers with respect and dignity in the workplace, with good pay and good conditions. I and everyone else should applaud that. I am sure the Minister shares my view that that practice should be adopted across the whole industry. The coronavirus crisis has highlighted the fact that even more needs to be done to protect UK seafarers and the UK maritime industry. Will the Minister consider reconvening the legal working group to consider further legislation to protect UK ratings and maritime interests?

This country was built on the shipping industry. The UK remains one of the world's leading maritime nations. We must continue to champion this heritage and do everything we can to promote the industry and maritime occupations to UK residents. The primary purpose of leadership is to create more leaders. The Government should be at the forefront of getting more UK residents working in maritime and its associated industries.

5.15 pm

Kelly Tolhurst: I thank the hon. Member for Wythenshawe and Sale for supporting the draft order, and I welcome him to his role. I think this is the first time he has shadowed me in Committee. I look forward to working with him on a number of issues in our portfolio.

We are really pleased to introduce this draft statutory instrument, which will come into effect on 1 October. I agree with everything the hon. Gentleman said about the need to be mindful of UK seafarers. We very much believe that they will welcome the draft order, particularly in the light of covid. As the hon. Gentleman rightly outlines, however, it catches only those who operate domestically, from port to port, and does not cover ferry routes such as that from Dover to Calais. It covers United Kingdom transit routes, including Northern Ireland.

I thank the hon. Gentleman for his suggestion that I reform the legal working group. We have formed the restart and recovery group, which will work on maritime issues such as UK seafarers' training and the UK flag, and that body receives union representations. I suggest that we continue that work, which is just starting, as we move through the uncharted territory of covid.

I am grateful to the hon. Gentleman for his comments. I hope that this shows that we are very much committed to our UK seafaring population. As a proud country with a long maritime history, I hope we will be able to strengthen and promote the sector and do what we can to ensure that everybody is able to consider a career in seafaring. The opportunities are vast.

I thank the Committee for its consideration of the draft order. In addressing this disparity, the amendments aim to align seafarers working domestically in the UK with those who work in land-based roles in the UK.

Question put and agreed to.

5.19 pm

Committee rose.

