

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT SEAFARERS (INSOLVENCY, COLLECTIVE
REDUNDANCIES AND INFORMATION AND
CONSULTATION MISCELLANEOUS
AMENDMENTS) REGULATIONS 2018

Tuesday 6 February 2018

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

Coffey, Ann (*Stockport*) (Lab)

† Cowan, Ronnie (*Inverclyde*) (SNP)

† Cruddas, Jon (*Dagenham and Rainham*) (Lab)

† Djanogly, Mr Jonathan (*Huntingdon*) (Con)

† Ghani, Ms Nusrat (*Parliamentary Under-Secretary of State for Transport*)

† Heappey, James (*Wells*) (Con)

† Lamont, John (*Berwickshire, Roxburgh and Selkirk*) (Con)

† Patel, Priti (*Witham*) (Con)

† Rimmer, Ms Marie (*St Helens South and Whiston*) (Lab)

† Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)

† Seely, Mr Bob (*Isle of Wight*) (Con)

† Shapps, Grant (*Welwyn Hatfield*) (Con)

† Smith, Nick (*Blaenau Gwent*) (Lab)

† Snell, Gareth (*Stoke-on-Trent Central*) (Lab/Co-op)

† Stevenson, John (*Carlisle*) (Con)

† Streeting, Wes (*Ilford North*) (Lab)

† Turner, Karl (*Kingston upon Hull East*) (Lab)

Robert Cope, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Tuesday 6 February 2018

[MR ADRIAN BAILEY *in the Chair*]

Draft Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018

8.55 am

The Parliamentary Under-Secretary of State for Transport (Ms Nusrat Ghani): I beg to move,

That the Committee has considered the draft Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr Bailey. The draft regulations will amend the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Information and Consultation of Employees Regulations 2004. Together with the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018, the draft regulations will transpose the requirements of the seafarers directive into the law of Great Britain. Northern Ireland is making provision to transpose those elements for which it has devolved responsibility.

In simple terms, the purpose of both sets of regulations is to ensure that seafarers and share fishermen, where employed, are provided with the same level of employment protection as those working on UK soil with regard to insolvency, collective redundancies, transfers of undertakings, information and consultation and works councils. They further demonstrate our commitment to ensuring that employment rights are protected in the UK.

In its 2009 communication, “Strategic goals and recommendations for the EU’s maritime transport policy until 2018”, the European Commission stressed the need to promote maritime employment and address shortages of European seafarers. It established a taskforce to look into measures to strike a balance between the employment conditions of EU seafarers and the competitiveness of vessels registered within the European Union. The taskforce submitted its findings in early July 2011 and identified five employment directives that contained derogations for seafarers that, if member states chose to apply them, allowed land-based workers greater employment rights than those at sea. It also identified the posting of workers directive, but it was quickly recognised that that directive required major amendments that went beyond providing for the potential inclusion of seafarers.

The purpose of the seafarers directive was to remove the derogations and address the anomaly that land-based workers may enjoy greater employment rights than those at sea. Because member states have been able to apply derogations on an ad hoc basis, the result has been that businesses in one member state have been able to comply with less favourable social protection for seafarers than those in another.

The Government and the UK social partners—Nautilus International, the RMT and the UK Chamber of Shipping—have been fully supportive of the seafarers directive. The UK social partners were at the forefront of discussion with the European social partners and were instrumental in steering them. The Government have fully engaged with the social partners.

I will not detail all the amendments that the draft regulations will make, because most of them simply delete existing provisions. Instead, I will draw to the Committee’s attention the reason for some of them. The UK has previously made use of derogations in relation to share fishermen, as it considers them to be self-employed. Share fishermen are fiercely protective of their status and I should be clear that the draft regulations will not amend their employment status, but it is recognised that in certain limited circumstances share fishermen may be considered to be employed. In such circumstances, they should have the same rights required by the seafarers directive and enjoyed by those employed in other forms of work.

The draft regulations will amend the Employment Rights Act and the Trade Union and Labour Relations (Consolidation) Act to include share fishermen, where employed, in matters relating to insolvency and collective redundancies. Part XI of the Employment Rights Act 1996 provides protection for employees in the event of a redundancy that arises in the context of the insolvency of an employer. Regulation 2(2) will remove the exclusion relating to part XI in relation to employed share fishermen. This amendment is not made for the purpose of implementing the amendment made to the 2008 directive by article 1 of the seafarers directive, but is made pursuant to the power in section 209(1)(c) of the Employment Rights Act.

Part XII of the Employment Rights Act provides protection for employees in the event of insolvency and implements in Great Britain directive 2008/94/EC, relating to the protection of employees in the event of the insolvency of their employer—otherwise known as the insolvency directive. Article 1 of the seafarers directive amends the 2008 directive by ensuring that seafarers employed as share fishermen are brought within the scope of the directive. To implement the amendment, regulation 2(2) will amend section 199 of the Act by removing the exclusion relating to part XII in relation to employed share fishermen. Regulation 2(3) will correct a previous omission and amend section 199 of the Act to bring merchant seamen within the scope of part XII, as previously provided for by the insolvency directive.

The derogation for the crews of seagoing vessels that was included in directive 1998/59/EC in relation to procedures for handling collective redundancies was removed by the seafarers directive. The UK had not relied on this derogation in relation to merchant seamen, but an amendment is made to section 284 of the Trade Union and Labour Relations (Consolidation) Act to bring employed share fishermen within the scope of part IV, chapter II of the Act.

The Government have also made very limited use of the derogations for seafarers with regard to information and consultation. An employer was permitted to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative. Furthermore, unless an employer permitted it, no long-haul crew

member could stand as a candidate for election as a negotiating representative or an information and consultation representative. Nor could they be appointed or elected to be a negotiating representative or an information and consultation representative. A long-haul crew member was defined as a person in the merchant navy who was not a ferry worker or a person who normally works on voyages of less than 48 hours. These derogations will be removed by the regulations.

The regulations do not implement the other provisions of the seafarers directive on participation in European works councils, notification of collective redundancies and the transfer of undertakings. The first two of these requirements will be provided for by the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 which were made under the negative resolution procedure and enter into force today. In the case of the amendments to the transfer of undertakings directive, no further implementation into domestic law has been required and guidance on the provisions in the directive has been published by the Department for Business, Energy and Industrial Strategy.

It may be noted that collective redundancies and insolvency appear in both instruments. Under the other instrument it provides new powers that place an obligation on an employer to notify the competent authority of the vessel's flag state in the event of a collective redundancy involving the crew of a seagoing ship. In this regard the competent authority would be the Maritime and Coastguard Agency.

As a consequence of the amendments to the insolvency directive, the negative instrument also makes minor amendments to section 165 of the Pension Schemes Act 1993 on the insolvency of an employer of merchant seamen.

The regulations before the Committee are intended to ensure that seafarers and share fishermen have the same employment rights and protections as those who work in land-based roles. It is fully supported by UK social partners and the Government and I commend it to the Committee.

9.3 am

Karl Turner (Kingston upon Hull East) (Lab): It is always a pleasure to serve under your chairmanship, Mr Bailey. We are supportive of the instrument, but we are concerned that the Government are late in implementing it. We also have some wider concerns.

In 2013, the European Commission issued a draft seafarers directive, extending employment and social directives to cover seafarers' place of work. The seafarers directive called on member states to transpose the directive into domestic law by 10 October 2017. We are now in February 2018. Will the Minister explain why it has taken three years to finally put this into UK law and why the Government have missed the deadline for doing that within the three-month period?

The delay in transposing the directive into UK law has affected seafarers' rights, especially those on offshore supply vessels who have been made redundant in recent years. Oil and Gas UK estimate that 13,000 jobs were lost in the industry in the first half of 2017—a staggering number of potential job losses. The RMT estimates that between 700 and 1,000 seafarers' jobs have been lost on

offshore supply, diving support and drilling vessels, as well as hundreds of jobs at North sea companies, since the seafarers directive was passed in the European Parliament in 2015. In some cases, the modest protections in the draft regulations would have provided better protections for seafarers who have been made redundant. I hope that the Government will reflect on the impact that their delay has had on workers who have been made redundant.

The growing decommissioning sector is likely to mean competition for contracts to carry out this work. It is unclear whether the protections set out in the draft regulations will apply to seafarers working on foreign-registered vessels who carry out that decommissioning work. Will the Minister confirm whether those workers will be covered?

The Opposition support the draft regulations, as I said, but we think the Government could go further. I am concerned that if the Government's post-Brexit aim for seafarers' employment rights is to go no further than the EU and to abide by the minimum standards in international regulations such as the maritime labour convention, it will lead to a loss both in jobs and in skills. The seafaring industry is rapidly losing skilled people, because not enough people are being trained. Will the Minister say what further steps the Government intend to take on employment rights for seafarers, especially with respect to the national minimum wage and equality? I urge her to bring forward the planned five-year review of the impact of the provisions to coincide with the post-Brexit period, including any transition period, to ensure that the UK statutory framework equalises protection for seafarers and land-based workers.

I would be grateful if the Minister addressed those points. We support the draft regulations and hope that they will be the start of a much needed process of improving employment rights for seafarers in the UK.

9.7 am

Ms Ghani: I must point out that this is my first go at a Delegated Legislation Committee as a Minister, Mr Bailey. Thank you for your patient chairmanship.

Before I tackle some of the points raised by the hon. Gentleman, it is important to note that the draft regulations have support from across the House, from the unions and from everybody involved in the sector. I do not recognise his thesis on job losses. The maritime industry is booming. Only last night, it had its annual dinner, at which we celebrated the increase in funding to ensure that even more seafarers can train in this country. The reputation of British seafarers is long and wide.

The hon. Gentleman raised the issue of the national minimum wage. Seafarers are entitled to the national minimum wage when they are working in UK internal waters and ports, regardless of their nationality or their ship's flag; outside UK internal waters on a ship with a UK flag, unless their employment is wholly outside the UK or they are not ordinarily resident in the UK; and outside UK internal waters on a ship without a UK flag if they ordinarily work in the UK. The issue of the national minimum wage has been raised several times in the Chamber by many colleagues across the House, and in my few weeks as a Minister I have raised it with the Department. I believe that a report is being undertaken by a working group from the Department for Business,

[Ms Ghani]

Energy and Industrial Strategy. Recommendations will be published shortly, and no doubt I will share them with the House. If we have not already had that conversation, we will be keen to have it going forward.

I am not sure what more to add, because we are all keen to put the draft regulations on the statute book. Fundamentally, they will allow seafarers the rights we enjoy on land. Seafarers are 20 times more likely to be at risk of harm from their work than those in other

industries, and five or 10 times more likely than those in the construction industry. The time they spend working out at sea is being reduced—previously it was 30 to 40 years, but now it is 15 to 20 years—so it is absolutely right that they enjoy all the security we have. I commend the draft regulations to the Committee and hope that they will receive support across the House.

Question put and agreed to.

9.10 am

Committee rose.