



# Seafarers Wages Act 2023

## 2023 CHAPTER 8

### *Surcharges*

#### **6 Imposition of surcharges: failure to provide declaration in time**

- (1) This section applies if—
  - (a) a harbour authority requests the operator of a service to which this Act applies to provide the authority with an equivalence declaration in respect of the service for a relevant year, and
  - (b) the operator does not provide an equivalence declaration in the prescribed form and manner before the end of the prescribed period.
- (2) If the prescribed period expires before the beginning of the relevant year, the harbour authority must impose a charge on the operator of the service in respect of each occasion when a ship providing the service enters its harbour between—
  - (a) the beginning of the relevant year, and
  - (b) whichever is the earlier of—
    - (i) the end of the relevant year, and
    - (ii) the time when the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner.
- (3) If the prescribed period expires during the relevant year, the harbour authority must—
  - (a) impose a charge on the operator of the service in respect of each occasion when a ship providing the service entered its harbour between—
    - (i) the beginning of the relevant year, and
    - (ii) the end of the prescribed period, and
  - (b) impose a charge on the operator of the service in respect of each occasion when a ship providing the service enters its harbour between the expiry of the prescribed period and whichever is the earlier of—
    - (i) the end of the relevant year, and

- (ii) the time when the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner.
- (4) If the prescribed period expires after the end of the relevant year, the harbour authority must impose a charge on the operator of the service in respect of each occasion when a ship providing the service entered its harbour during the relevant year.
- (5) But charges imposed by a harbour authority under subsection (3)(a) or (4) must be refunded if—
  - (a) at any time after the end of the prescribed period the operator provides the authority with an equivalence declaration in respect of the service for the relevant year in the prescribed form and manner, and
  - (b) the declaration is within section 4(4) or (5).
- (6) For the purposes of this section, in relation to an equivalence declaration which an operator of a service is required to provide—
  - “prescribed period” means the period within which the operator is required to provide the declaration in accordance with regulations under section 3(5) (a);
  - “prescribed form and manner” means the form and manner in which the operator is required to provide the declaration in accordance with regulations under section 3(5)(b) and (c).

## **7 Imposition of surcharges: in-year declaration that is prospective only**

- (1) This section applies if—
  - (a) a harbour authority requests the operator of a service to which this Act applies to provide the authority with an equivalence declaration in respect of the service for a relevant year,
  - (b) the operator provides the declaration during the relevant year in accordance with regulations under section 3(5), and
  - (c) the declaration is within subsection (3) of section 4 (and not also within subsection (4) of that section).
- (2) The harbour authority must impose a charge on the operator of the service in respect of each occasion when a ship providing the service entered its harbour between the beginning of the relevant year and the time the declaration was provided.

## **8 Imposition of surcharges: operating inconsistently with declaration**

- (1) Subsections (2) and (3) apply if—
  - (a) the operator of a service to which this Act applies has provided a harbour authority with an equivalence declaration in respect of the service for a relevant year, and
  - (b) either—
    - (i) the operator notifies the authority that at a specified time after the declaration was provided the service was, or started to be, operated inconsistently with the declaration, or
    - (ii) the authority has reasonable grounds to believe that, at a time after the declaration was provided, the service was, or started to be, operated inconsistently with the declaration.

- (2) The harbour authority must impose a charge on the operator in respect of each occasion when a ship providing the service entered or enters the harbour between—
  - (a) the time mentioned in subsection (1)(b)(i) or (ii), and
  - (b) the end of the relevant year.
- (3) But if after the time mentioned in subsection (1)(b)(i) or (ii) the operator provides the harbour authority with a fresh equivalence declaration in respect of the service for the relevant year, the authority must not impose a charge under subsection (2) in respect of an occasion when a ship providing the service enters the harbour after the fresh declaration is provided (unless that subsection applies again by reference to that or a later declaration).
- (4) Subsections (5) and (6) apply if—
  - (a) the operator of a service to which this Act applies has provided a harbour authority with an equivalence declaration in respect of the service for a relevant year, and
  - (b) the authority has reasonable grounds to believe that the declaration is false or misleading in so far as it concerns the operation of the service before the declaration was provided.
- (5) The harbour authority must impose a charge on the operator in respect of each occasion when a ship providing the service entered or enters the harbour during the relevant year.
- (6) But if the operator provides the harbour authority with a fresh equivalence declaration in respect of the service for the relevant year, the authority must not impose a charge under subsection (5) in respect of an occasion when a ship providing the service enters the harbour after the fresh declaration is provided (unless that subsection applies again by reference to that or a later declaration).

## **9 Surcharges: general**

- (1) The amount of a surcharge is to be determined by a tariff of surcharges specified in regulations.
- (2) A duty to impose a surcharge is subject to any direction given by the Secretary of State under section 16(1)(a).
- (3) A harbour authority which fails to comply with a duty to impose a surcharge is guilty of an offence and liable on summary conviction—
  - (a) in England and Wales, to a fine, or
  - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (4) Regulations may make provision as to—
  - (a) how the imposition of a surcharge is to be notified to the operator;
  - (b) the period within which a surcharge must be paid;
  - (c) the manner in which a surcharge must be paid;
  - (d) notification of the imposition of a surcharge to the Secretary of State;
  - (e) publication of the fact that a surcharge has been imposed.
- (5) Regulations may make provision requiring a harbour authority that has imposed a surcharge to notify the Secretary of State if so much of the period within which the

surcharge must be paid as is specified in the regulations has expired without the surcharge having been paid in accordance with regulations under subsection (4)(c).

- (6) A harbour authority may retain a surcharge paid under this section and apply it for the purposes of shore-based welfare facilities for seafarers.
- (7) References in the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970 to ship, passenger and goods dues do not include a surcharge.
- (8) In this Act, “surcharge” means a charge under section 6, 7 or 8.

## 10 Objections to surcharges

- (1) Where a surcharge is imposed by a harbour authority, an interested party may object to the imposition of the surcharge or its amount.
- (2) An objection under this section to the amount of a surcharge may be made only on the grounds that the amount is not in accordance with the tariff of surcharges specified in regulations under section 9(1).
- (3) An objection under this section is to be made to the Secretary of State in writing.
- (4) Regulations must provide for a period within which objections under this section must be made.
- (5) In subsection (1) “interested party” means—
  - (a) a person appearing to the Secretary of State to have a substantial interest in the imposition of the surcharge or its amount, or
  - (b) a body appearing to the Secretary of State to be representative of persons within paragraph (a).
- (6) Where an objection is made under this section, the Secretary of State must—
  - (a) send a copy of the objection to the harbour authority, and
  - (b) publish online a notice stating—
    - (i) that the objection has been made and the grounds on which it has been made, and
    - (ii) that representations in relation to the objection may be made to the Secretary of State within the period specified in the notice (which may not be less than six weeks from its publication).
- (7) If any representations are made under subsection (6)(b)(ii), the Secretary of State must—
  - (a) send copies to the harbour authority and the objector, and
  - (b) allow them a reasonable time to comment on the representations.
- (8) After the expiry of the period referred to in subsection (6)(b)(ii) and, if relevant, the time referred to in subsection (7)(b), the Secretary of State must, unless the objection is withdrawn, proceed to consider the objection and any representations made.
- (9) Once the objection and any representations have been considered under subsection (8), the Secretary of State may decide—
  - (a) to approve the imposition of the surcharge and its amount,
  - (b) to direct the harbour authority to revoke the imposition of the surcharge, or

- (c) 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 regulations under section 9(1).
- (10) The Secretary of State must—
- (a) communicate the decision to the harbour authority and the objector, and
  - (b) publish the decision online.
- (11) The Secretary of State may direct a harbour authority to repay any surcharges that appear to the Secretary of State to be appropriate to be repaid by that authority as the result of a decision under this section (and may vary or revoke any such direction).
- (12) Subsections (6) to (10) do not apply to an objection if the Secretary of State considers that the substance of the objection has already been, or is being, considered under this section in connection with another objection.

## **11 Refusal of harbour access for failure to pay surcharge**

- (1) A harbour authority must refuse access to its harbour to a ship providing a service to which this Act applies if—
- (a) the authority has imposed a surcharge on the operator of the service in respect of the entry into its harbour by any ship providing that service,
  - (b) the operator has not paid the surcharge in accordance with regulations under section 9(4)(c), and
  - (c) the period within which the surcharge must be paid has expired.
- (2) It does not matter for the purposes of subsection (1) whether an objection has been made to the surcharge under section 10.
- (3) Subsection (1) does not apply in relation to any surcharge imposed under subsection (3)(a) or (4) of section 6 which would, if paid, be required to be refunded under subsection (5) of that section.
- (4) But a harbour authority must not refuse access to a harbour—
- (a) in cases of *force majeure*;
  - (b) where there are overriding safety concerns;
  - (c) where there is a need to reduce or minimise the risk of pollution;
  - (d) where there is a need to rectify deficiencies on the ship.
- (5) The duty under subsection (1) is also subject to any direction given by the Secretary of State under section 16(1)(a).
- (6) A harbour authority which fails to comply with subsection (1) is guilty of an offence and liable on summary conviction—
- (a) in England and Wales, to a fine, or
  - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (7) Regulations may make provision as to how a harbour authority is to communicate refusal of access under this section.
- (8) Nothing in section 33 of the Harbours, Docks and Piers Clauses Act 1847 prevents refusal of access to a harbour under this section.