

Today's Lords debates - Friday 01 February 2013
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House of Lords Marine Navigation (No. 2) Bill

Marine Navigation (No. 2) Bill

Committee

1.46 pm

Moved by

Baroness Wilcox

That the House do now resolve itself into Committee.

Amendment to the Motion

Moved by

Lord Berkeley

Leave out from "House" to end and insert "declines to consider the bill in committee until Her Majesty's Government have laid before both Houses of Parliament a report on the compatibility of the provisions of the bill (and in particular the provisions of Clause 2 and proposals to allow junior ratings to hold pilotage exemption certificates) with the International Maritime Organization's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers."

Lord Berkeley:

My Lords, in moving this amendment to the Motion, I would like to refer the House to its wording at the bottom of grouping sheet, which has somehow been printed at the bottom of all the amendments to the Bill. This is what I am speaking to now. It is unusual to put down an amendment to a Motion such as this, but we are in slightly unusual times—as we come up to the end of the Session—because we had two days' notice of the Committee stage today. I had a useful meeting with the noble Baroness, Lady Wilcox, and her officials on Monday, where I said it was particularly important that we should see a reply to the letter which we had all been sent from Brian Simpson MEP, chairman of the Transport Committee in the European Parliament, to the Secretary of State for Transport. I said that I needed to see that reply before we discussed it in Committee. Once I knew what the date was, I put the amendment down on Wednesday night and, miraculously, the letter appeared on Thursday morning. That was good news, but it gave us just 24 hours to consider it. As it did not answer the main question that Mr Simpson had asked, I felt it was reasonable to ask for a week's delay to the Committee, which is what my amendment is about.

As I said, the letter did not answer the concerns that Mr Simpson raised concerning the qualification of the pilots, an issue I have discussed before. I

declare an interest as chairman of the UK Maritime Pilots Association, as well as being a harbour commissioner in the port of Fowey in Cornwall. It appears from Mr Simpson's letter to the Secretary of State, from which I will read a short bit, that it causes him and his committee in the European Parliament some concern, since,

"this clause would appear to be in contravention of the STCW regulations of the IMO which have now been enacted into EU law".

I will show in a minute that I think those regulations are already in EU law. It seems very odd that in this Bill we have a definition of the management, qualifications and experience required for a PEC holder when there is already one in EU law, which I believe has already been transposed into UK law. I am not very sure, because I have not had time to check it, but since it started about 10 years ago I think it has.

There is also a new directive coming out. Very quickly, this refers to the standards of training, certification and watchkeeping for seafarers from 1978, which were amended on 3 August 2010 by the IMO. They cover the management and operational levels and define those two levels, while giving: "Mandatory minimum requirements for certification of officers in charge of a navigational watch on ships of 500 gross tonnage or more", and the minimum knowledge. I could read the whole thing out but I am sure that noble Lords will be pleased to hear that I will not. The important thing is that this defines, under Section A-II/2, the qualifications, competence and experience that masters and first mates have to have; those have to be applied to PEC holders.

It is pretty extraordinary that we were not told about this at a previous stage of this Bill because it directly relates to the debate that we had at Second Reading, and which they had at many stages in the House of Commons, about the qualifications for pilotage. For the record, the latest reference for this is in European directive 2012/35, which was completed on 21 November last year and will be presumably be brought in by regulation within two years. However, it is already there from the last version; this was the Manila version.

It is rather sad that the Minister, Stephen Hammond, did not in his reply mention that or answer any of the questions. He ended up by saying on page two of his letter that it is for,

"the Master or First Mate",

to decide whether a PEC holder is qualified. That seems a quite extraordinary misinterpretation of the rules. It is not up to the master to change the requirements for training or seniority of a person to allow him to become a PEC holder, because the convention we are talking about lists three specific cases in which penalties are to be applied. If the master is found to have allowed unduly qualified persons not holding the right certification, et cetera, to perform a function, he is liable to be fined, as is the company. Of course, the person concerned may also get fined.

I will be very interested to hear the Minister's response as there seems to be a serious conflict on the management, levels and skills required for a PEC holder between the legislation that came from the IMO, through Europe, to here and what is in the Bill. Can the Minister say whether this conflict was

known about? I presume that it was and I am sorry that noble Lords were not told about it earlier. I suggest that the Minister and the noble Baroness, Lady Wilcox, bring forward a suitable amendment on Report, if it can be done, to link the existing regulations in the directive with the relevant parts of Clause 2 because there will otherwise be court actions coming out of people's ears. When people find out that they have two regulations, and that one works for them and the other does not, they will all be going to court—and the ports, the pilots and everyone else will be the losers. It is very important that this matter is resolved and I beg to move.

Lord Eames:

My Lords, in supporting the noble Lord, Lord Berkeley, I declare an interest as a member of the Royal Yachting Association. I cannot imagine a greater recipe for the lawyers of our knowledge than the conflict that the noble Lord, Lord Berkeley, has exposed before us today. The question of qualifications, training and their wedding with experience is a very sensitive area in the maritime world. We are not dealing simply with a technical matter. We are dealing with one of the most sensitive issues, which concerns people who are transported, people within the marine industry and people with an interest in our ports. The noble Lord, Lord Berkeley, has put his finger on one of the most sensitive issues—this is not a technical attempt to restrain the legislation or prove difficult about it—which has to be given the closest possible attention because there is a conflict in places between these two edicts. The conflict, in my experience, will lead to an open charter for many months and years to come unless we are satisfied as a House that every possible examination has taken place of the difficulties between these two approaches.

I am also convinced that where there is any question of conflict, not only does it raise issues of a purely legal nature, but it puts into contempt the sort of respect that people ought to have of the whole industry. For that reason, I too will be very interested in what the Minister says about what examination has been made of this conflict. Has it been given the attention that it deserves?

I also regret the way in which the legislation has been produced today, on a Friday, with so little notice to many of us who come a great distance to attend the House. At this early stage, I ask that very serious consideration be given to the Bill by the Minister, for whom I have the highest regard and who has always been most helpful when I have raised issues with him. However, in this instance I believe that the full import of what the noble Lord, Lord Berkeley, says has yet to be realised by the Government.

Lord Chidgey:

My Lords, noble Lords will remember that at Second Reading we had a mutual admiration for the ancient mariners of Watchet. We all seemed to know Watchet very well, to my great surprise. I mention it in the context of this Committee stage because noble Lords will acknowledge the goings-on in Watchet in the past week. There was almost a terrible tragedy when an infant in his pushchair was swept into the harbour in high winds. He was rescued—and the point is about the definition of people's roles—by one 63 year-old George Reeder, who jumped into what was probably 30 feet of

water to rescue the child. He was variously described as a port master, a dock master, a marine dock master and a harbour master. Each of those titles carries a certain responsibility and weight in maritime law. If we cannot get that straight, just imagine what will happen if we do not get this straight.
2 pm

I share the concerns of other noble Lords. It sounds to me as though we have two different conventions, each bearing legal weight, that our maritime industry is supposed to operate under. The chances of dissatisfied elements seeking a judicial review must be extremely high, and I ask the Minister whether any assessment has been made of the cost to the taxpayer of the sort of judicial action that could be taken by parties trying to prove their point. Not to have a clear answer before the House about the legal opinions that the Government have on this issue is incredibly risky.

Lord MacKenzie of Culkein:

My Lords, I do not want to get into European law, but we are talking about definitions. The noble Lord, Lord Chidgey, has referred to them. The amendment in the name of my noble friend Lord Berkeley refers to, "proposals to allow junior ratings to hold pilotage exemption certificates". There is nothing in the Bill that suggests that junior ratings should hold a PEC. It refers to deck officers, not junior ratings.

I failed the Board of Trade eyesight test to go to sea as a deck officer cadet, so I have lost out on some of the expertise, but my father was a Merchant Navy officer, I have two relatives who are master mariners, masters of Northern Lighthouse Board vessels, and a stepson who is a senior officer in the Royal Fleet Auxiliary, and I think that they would all say to me that a rating on a ship is a support worker. He may be an able seaman, an ordinary seaman, perhaps a carpenter, or a coxswain, but not a deck officer. A deck officer is someone who will have passed the examinations for STCW—Standards for Training, Certification and Watchkeeping—on board a vessel. I therefore say with the greatest of respect to my noble friend Lord Berkeley that the amendment is defective in talking about junior ratings when the Bill has nothing to say about junior ratings. We are talking about giving deck officers the possibility of having a pilotage exemption certificate. The PEC will be given only by a competent harbour authority, and I cannot imagine any competent harbour authority giving a pilotage exemption certificate to anyone who is not properly qualified, because the risks of doing that would be immense: blockage of a channel or harbour or a ship running aground. The risk to that harbour authority would be pretty immense, and I cannot see for the life of me any of these harbour authorities giving a PEC to someone who is not properly qualified and examined with a STCW. I hope that my noble friend Lord Berkeley will not press his amendment, because it is quite clearly defective in its wording.

Earl Attlee:

My Lords, the Motion moved by the noble Lord, Lord Berkeley, invites the Government to take a particular action before the House goes into Committee. It may be unusual, but it is order. I must confess that I am surprised by the move by the noble Lord to delay debating the Bill today. It was, after all, his express wish at Second Reading, only a fortnight ago, that

the Bill reach the statute book. He said:

"I wish the Bill well. I hope that we can get it to Royal Assent without too many delays".—[Official Report, 18/1/2013; col. 911.]

I have no problem with the noble Lord wanting to debate the Bill properly, but he knows that any amendment is fatal to nearly all Private Members' Bills. He must be aware that if the Bill is to achieve Royal Assent as he desires, it is necessary for this House to debate it today. A week's delay is not available. I, too, hope that the Bill will achieve Royal Assent—it contains measures that our valuable maritime industry has been seeking for many years—but if it does not, I would rather that it fell as a result of the clear will of this House rather than of a move to delay discussion.

The noble Lord, Lord Chidgey, asked me about legal advice. I assure the House that my department has plenty of lawyers who delight in constraining me in what I can say to your Lordships. Noble Lords will know that it is a long-standing convention that Ministers do not release legal advice.

Furthermore, the noble Lord has indicated his concerns about the legality and desirability of Clause 2. I understand that he is very content with the other clauses. That being the case, it might have been more appropriate to table an amendment to provide that Clause 2 can be commenced only after the report that he desires has been published. I have certainly tabled many such amendments in my time.

Having said that, I understand the noble Lord's desire to ensure that the Bill does not conflict with international agreements that this country has entered into freely. I am happy to give the assurance today that nothing in the Bill conflicts with the Standards for Training, Certification and Watchkeeping, the STCW. I am not convinced that a report stating the same would have any more effect than me, as a Minister of the Crown, doing so at the Dispatch Box.

A ship must comply with the applicable requirements of the code; there is no doubt about that. On some ships, the crew structure will permit another deck officer to act as pilot, using their pilotage exemption certificate, while remaining fully compliant with the code. The noble Lord refers to junior ratings being allowed to hold pilotage exemption certificates if this Bill passes. I do not think it right that I should pre-empt discussion on Clause 2, which I hope that we can have today, but I will say now that this clause does not propose such a thing. I may be able to satisfy the noble and reverend Lord, Lord Eames, at this point. A junior rating is not a deck officer, though a rating might,

"also help deck officers with navigational and watch duties, and anchor the ship when coming into port",

to quote the National Careers Service.

What we envisage, and what I believe that the industry understands by the term "deck officer" is much more substantial. A deck officer capable of satisfying the pilotage exemption certificate requirements will have had several years of experience at sea and have responsibility for navigation of the ship, which is somewhat more advanced than a junior rating.

I hope, therefore, that the noble Lord will be willing to withdraw his amendment and enable us to move on and use the time that we have for

important Committee debates which we need to have before the House can be sure that the legislation is sound.

Lord Berkeley:

I am grateful to all noble Lords who have spoken in this debate. I tabled the amendment on Wednesday evening because I still had not received a copy of the letter from the letter from Stephen Hammond MP, which I felt that we needed. The letter arrived 12 hours later, perhaps because I tabled the amendment—I do not know. I could have said that we should delay discussion from Clause 2, but I took advice from the Clerks and this is the amendment that I tabled.

Some noble Lords have probably strayed into discussions on the clause stand part debate. The issue over which I raised this was that of the two potentially different definitions of who can have a PEC. The Minister did not answer, so I suppose that we can all expect lots of court appearances, as the noble Lord, Lord Chidgey, suggested. On that basis, I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Clause 1 agreed.

Clause 2 : Pilotage exemption certificates: grant

Debate on whether Clause 2 should stand part of the Bill.

Lord Berkeley:

My Lords, I do not intend to repeat what I said at Second Reading, or what I said on my earlier amendment, as we have had a good debate on the issue in Clause 2. My concern remains only with the inclusion in the clause of the phrase “deck officer” without a definition of the qualifications and experience of a deck officer and a recognition of the importance of being high up in the management tree of the ship.

My noble friend mentioned junior ratings. With his knowledge and experience, I am sure that he has a good point but I feel that nowadays, and in line with the EU regulations that we talked about earlier, it is important to have a definition of who can and cannot be given a PEC as a deck officer. It is very easy to say that a competent harbour authority will not give someone a PEC unless he is qualified, but it is like so many of these things—on a good day, when everything is going well, it will work out all right, but, sadly, we have all had experience of when things do not go quite right and sometimes a harbour authority is less competent than it might be. Where two ports are sited reasonably close together and are competing for trade, there must be a temptation for one of them to offer a PEC to somebody on a particular shipping line if that will attract the ship into that port and bring in probably much needed revenue. I would like to try to persuade the Minister to be as generous as he can in giving a tighter definition to the meaning of “deck officer” as applied in this Bill. If it can be related to the IMO deck officer that we discussed earlier, that would tie everything together and would probably also reduce the number of future court cases, which we all wish to avoid.

I could go on for a lot longer. I do not want to delay things too much and I still want to see this Bill pass. However, it would be very helpful if the Minister could give an assurance on that issue and then we can move on. My

other concerns about the Bill are very small compared with that one.

Lord Rosser:

I repeat what we said at Second Reading. We support the Bill and want it to succeed, not least because many of its provisions were contained in a draft Bill that we produced when we were in government. However, I am not sure that the Government are being as helpful as they might be as regards some of the detail. Clearly, the most contentious issue is that of the exemption certificate. My noble friend Lord Berkeley referred to the definition of "deck officer".

I am grateful to the Minister for sending me a reply to a number of questions that I asked at Second Reading. I was given the letter—dated yesterday—only this morning. I have had a look at it although, obviously, not as long a look as I might have wished. However, I am genuinely grateful to the Minister for the reply and for responding to the points that I made in our previous debate. The Minister has given a definition of "deck officer" in that letter and said that it enjoys the dictionary definition of, "an officer in charge of the above-deck workings and manoeuvres at sea of a ship or boat".

However, I do not think that that definition covers the issue of the minimum level of experience for,

"an officer in charge of the above-deck workings and manoeuvres at sea of a ship or boat",

particularly as regards the pilotage operation. This comes back to the issue raised by my noble friend Lord Berkeley on the standard of experience that is to be required. It would be extremely helpful if the Minister, when he responds, could give an assurance on that point.

I also asked about the role of the competent harbour authorities. The Minister said in his reply:

"It is a matter for Competent Harbour Authorities to decide who has the skill, experience and local knowledge sufficient to be capable of piloting the ship, and for shipping operators to develop and implement a Safety Management System to provide clarity on the roles and responsibilities of the bridge team when a Pilotage Exemption Certificate holder is acting as a pilot".

Saying that it is a matter for the competent harbour authorities to decide who has the skill, experience and local knowledge does not address in particularly clear terms how much training it would take to obtain a pilotage exemption certificate in a place such as Liverpool.

2.15 pm

From what I have been told, Liverpool Pilots brings in for training master mariners with command experience as a minimum requirement. I have been told that they undergo six months' intensive training and are required to excel in local knowledge, as well as completing in excess of 100 training trips and an examination to become a pilot of the fourth class, giving them the authorisation to have the conduct of vessels not exceeding 95 metres in length. The letter that I received then says that it takes a further seven years and three examinations eventually to qualify to conduct the largest ships that transit the River Mersey. The author of the letter says:

"We find from experience that this is the right level of training for a Liverpool

pilot, supplemented subsequently by regular assessment and simulator courses”.

The letter goes on:

“In order for a Liverpool pilot to qualify within his area to pilot a vessel of 180 metres’ measurement, it would require that he be a master mariner with command experience and experience as a Liverpool pilot for three years, having undergone three examinations and numerous passages into Liverpool with training and extensive experience in the use of tugs”.

The question arises as to what level of training and experience will be required for a pilotage exemption certificate under the Government’s current definition of “deck officer”. I appreciate that that deck officer is not the same as an authorised pilot, but what I understand to be the level of training and experience required of a pilot at Liverpool would suggest that there has to be at least a considerable period of training and experience before that deck officer is given the pilotage exemption certificate. It would be very helpful if the Minister could say something about that and about how, in particular, the Government see the situation.

I also understand that the Pilotage Act, which refers to the exemption certificate, provides that an examination for an exemption certificate must not be unduly onerous—I do not know quite what that means—in relation to the requirements of an authorised pilot. That sort of wording indicates that the training and experience may well be significantly less than that required for an authorised pilot. Perhaps the Minister can comment on that and, once again, explain how the Government, who are supporting the Bill, see its provisions working in relation to the giving of a pilotage exemption certificate to a deck officer.

There was also a suggestion that part of the case for putting forward this measure related to giving deck officers more experience and developing their skills. To an extent, one can see that that argument might be made.

However, certainly a view that has been expressed to me—I can only put it across and invite the Minister to comment—is that the PEC is an exemption granted to bona fide masters or mates of regular vessels for commercial convenience in a compulsory port in order that those vessels need not engage the services of an authorised pilot. It is a local exemption, not a formal Merchant Navy qualification, and has no bearing on a junior officer’s promotion prospects. Indeed, some ports will grant exemptions without even the formality of an examination. That rather calls into question the strength of the argument that this is needed as part of the development programme for more junior officers on vessels. Again, it would be helpful if the Minister could respond on that point.

At Second Reading, the Minister was good enough to provide me with a response about whether the changes proposed in the Bill will be to the financial advantage of any groups of individuals, organisations or companies. The Minister said that the impact assessment for the Bill considered that there would be a small financial benefit to shipping companies, achieved through more flexible crew rostering and the possibility of reducing the cost of marine pilotage. I do not know whether that reference to reducing the cost of marine pilotage would have an impact on authorised pilots. The letter I

have received does not say that that is the case. However, the reference to there being a small financial benefit to shipping companies does not quite tally with some of the reasons that have been put forward to us about why the shipping companies think it would be achieved through greater flexibility over rostering, which would suggest that they might see a significant financial advantage in having that greater flexibility. In his reply, the Minister referred to the impact assessment for the Bill, saying that there might be a small financial benefit. I am not sure which camp the Minister is in on that issue.

At Second Reading, I also raised the question of whether the competent harbour authority would be able to insist on or provide for a limit on the number of pilotage exemption certificates that it would give in respect of officers on a particular vessel. The answer that I have received is that a competent harbour authority would not be able to insist on a limit. That raises the question, which I also put the Minister last time, of whether there would be a requirement for someone who had been granted an exemption certificate to exercise their responsibilities in relation to piloting on a minimum number of occasions. As I understand the answer I have received, once you have the certificate, there will not be any requirement to carry out those responsibilities on a minimum number of occasions. If I have understood the Minister correctly—I am sure he will correct me if I have not—it seems odd that any competent harbour authority would not be able to insist on a limit. Clearly, if you have a number of people on a vessel who have the certificate, then presumably they would carry out that responsibility on fewer occasions. Concern has been raised about the implication of this provision in the Bill and the extent to which people will be experienced in the pilotage role if they have the pilotage exemption certificate. Once again, it would be extremely helpful if the Minister were able to give some reassurance on that point.

We indicated our support for the Bill in the Commons and I recollect that I reiterated that support when we discussed it at Second Reading. However, as the Minister knows, we have concerns. They include the experience of people who receive a pilotage exemption certificate and their rank and status; the numbers of such certificates that might be issued; and the frequency with which they might be required to carry out their skills in order to ensure that that experience is retained. On the assumption that the Minister will not support the withdrawal of Clause 2, I hope that he will be able to address the concerns raised by my noble friend Lord Berkeley and the concerns that I have raised, which have been expressed to me and which I do not think have been fully addressed.

The Earl of Caithness:

My Lords, I did not take part in the earlier debate, because quite clearly it was of a species known as the “Berkeley herring”, which is a close relative of its cousin, the red. I wanted to get on and talk about the Bill.

Let me first chide the noble Lord, Lord Berkeley, again—I do so with the best of intentions—for his discourtesy to the House in having every single amendment starred. We had Second Reading two weeks ago. It was not beyond the bounds of possibility to have the amendments so that we could

consider them before coming in on a Friday and finding them there on the Marshalled List.

On the noble Lord's request for a definition, he mentioned that there would be different harbour authorities, that there might even be competing ports and a commercial benefit for one port. He forgot to mention, of course, that there would be pilotage error as well, sadly. We cannot get rid of human error. That is one of those things; we saw it with the "Sea Empress". The only way of having totally safe waters is to ban every single vessel from them, which of course is a totally impractical way of proceeding. Human error will always be a factor, both on land and particularly at sea. I know that full well from my experiences as a Shipping Minister.

The noble Lord, Lord Rosser, came up with a definition. It was given to him by the Minister. It happened to be the definition that I quoted at Second Reading. As a result of quoting it at Second Reading, a circular letter was produced by the pilots condemning me for quoting it. I suppose it is not entirely appropriate that any Member of this House should quote a Secretary of State or a Minister from another place. It did not add to the pilots' arguments one bit. The noble Lord, Lord Rosser, was very brave to quote it. Doubtless he will also get a letter condemning him for doing so.

I suggest that the noble Lord, Lord Rosser, looks again at the Explanatory Notes. The definition is helped by the words there, which I also quoted at col. 915 on 18 January. The key words are:

"capable of piloting one or more specified ships".

I know that the Government will have taken full legal advice; no Minister would dare go to that Dispatch Box without having done so. The wording in the Bill is safe. It will work. I commend the Bill as it stands, and do not support the proposal of the noble Lord, Lord Berkeley.

Lord Greenway:

My Lords, I follow the same line as the noble Earl. In the previous debate, a noble Lord referred to the noble Lord, Lord Graham of Edmonton, as a "diamond" and "dogged". Well, the noble Lord, Lord Berkeley, is certainly dogged. If he is as good as his word and lets this Bill go through, I might even describe him as a diamond.

We have been talking semantics here about "deck officer". "Deck officer" is a term that has been used for many years, as the noble Lord, Lord MacKenzie, said. Everybody at sea knows what a deck officer is.

My worry is about the future. I attended the City of London maritime dinner last night, where the lord mayor and the noble Lord, Lord Green, the Trade Minister, made excellent speeches about the great importance of our maritime business right across the board, from shipping to insurance to arbitration to lawyers, and in maintaining the City of London as the world centre for these operations.

On the issue of pilotage exemption certificates, a real problem is looming, certainly in the ferry industry. The demographic graph shows that a lot of the officers are within five years of retirement. Where are the younger officers going to come from? The Bill would enable young and upcoming officers to advance up the tree perhaps rather more quickly by gaining pilotage exemption certificates. It will not happen across the board. There will be a

few here and a few there; it will not be widespread. They are our seed corn for manning our ships in future. More importantly, we hope that some of these people will in time become pilots, so it will benefit the pilotage business in the longer term. That is a very important point to make.

2.30 pm

Lord Berkeley:

I hear what the noble Lord says and generally support it, but I have not quoted many letters from pilots, although we have heard a lot of them today. One touched on this subject. A number of British shipping companies, including some ferry companies, are taking on and training young people. However, once the trainees have got to a certain stage and the government grant that goes with them is finished, they find that they cannot get a job because on the whole the shipping lines try to recruit young, cheaper officers from abroad. Does the noble Lord have a solution to that?

Lord Greenway:

My answer to that would be that young, well trained British officers are highly thought of elsewhere in the world, so jobs are available for them. PEC examinations can be seen by both individuals and their employing companies as an important rung in the advancement of their professional careers. They involve commitment and academic effort. Those sitting the exams need both professional experience and proven competence in ship-handling. They must also be highly motivated. Therefore, I think that a lot of these concerns have been overstated. To me, there is no doubt that the extension of PEC eligibility will be of benefit to UK seafarers.

Finally, I will say that if the Bill passes, a lot of these concerns can be dealt with by the steering group of the port marine safety code. That would involve the UK Chamber of Shipping, the various ports groups and the pilots' association. They can sit down and work out the details of how this change is to be implemented.

Earl Attlee:

My Lords, the noble Lord, Lord Berkeley, eloquently set out the concerns that he and maritime pilots have about Clause 2 when he gave notice of his intention to oppose the Question that the clause should stand part. I understand perfectly the desire to ensure that marine safety is promoted and that nothing is done to undermine it. I believe that this desire is felt all around the Committee and across the maritime industry. Therefore, I will try as hard as I can to meet noble Lords' concerns.

The sole purpose of Clause 2 is to remove the limitation in the Pilotage Act 1987 that restricts the issuing of pilotage exemption certificates to the master or first mate of a ship, and instead to allow any deck officer to apply for a certificate. It does not grant one; it merely allows a deck officer to apply to the competent harbour authority for a PEC. It changes none of the other provisions in the Act relating to the demands made on an applicant for a certificate: namely, that the applicant must be a bona fide deck officer of a ship. The clause does not open up the possibility of unauthorised pilotage services being established. I know that that is a concern of pilots and of the noble Lord.

The applicant must be a genuine member of the crew of the ship named on

his PEC. No doubt if the pilots in a harbour knew something was going wrong in this regard, they would take it up with the competent harbour authority. If the authority did not listen, they could take it up with the Maritime and Coastguard Agency. If the agency did not listen, they could take it up with the noble Lords, Lord Berkeley or Lord Rosser, with me or with the shipping Minister. There are plenty of routes for aggrieved people to take up this problem.

Furthermore, under the Bill, the competent harbour authority could immediately revoke the PEC if it becomes aware of any problems. The competent harbour authority must be satisfied that the applicant has the skill, experience and local knowledge sufficient for them to be capable of piloting the ship named on the certificate. The PEC applies only to one ship and one harbour. To my mind, this is the crucial safeguard that restricts the issuing of a certificate only to those mariners competent to use one. It is much more relevant than a job title in determining whether someone can safely navigate in specific waters.

The certificate applies to a specific harbour or part of a harbour as appropriate. If anyone seeks to be certified elsewhere, they must demonstrate their skill, experience and local knowledge for those waters to the appropriate competent harbour authority. The competent harbour authority may decide, in the interests of safety, to satisfy itself that the applicant has a sufficient knowledge of the English language. The competent harbour authority decides the method by which it will satisfy itself of an applicant's qualifications, which may be through examination or by reference to other requirements. The certificate remains in force for no longer than one year and it can be renewed only if the competent harbour authority remains satisfied about the foregoing points.

I mention that to demonstrate that the clause in no way reduces the standards of competency required of PEC holders. Stephen Bracewell, the chief executive of Harwich Haven Authority, made this point succinctly to the Transport Select Committee on 17 December 2012, saying that the Bill would do,

“nothing more than add a few people to the list of people who can knock on the door and ask to start the process of being assessed and examined”.

He rejected the idea that a harbour authority would lessen the standards by which they assess and examine people stating:

“We are not going to do it”.

Having outlined what this clause does not change, I turn to what it would do. The clause would permit a competent harbour authority to award a PEC to any deck officer who meets the criteria that I have outlined. The desire for making this change comes from the shipping industry, which has identified a number of potential benefits to several factors, including roll-on roll-off passenger ferries, small domestic ferries and aggregate dredgers.

The clause would permit increased flexibility for shipping companies in the rostering of deck officers, especially in the event of disruption and staff sickness, which currently can be problematic. The additional flexibility would also assist when supplementary or release sailings are chartered, increasing the call on deck officers. Though a comparatively small sector, the change

would allow improved flexibility for vessels such as dredgers to operate in piloted waters for extended periods and mitigate the risk of fatigue for certificate holders on these ships.

The industry also wants to respond to demographic trends affecting certificated deck officers, which is a point made by the noble Lord, Lord Greenway. A large proportion of officers are approaching retirement within the next five years and the industry needs to train younger officers to be capable of fulfilling senior roles in the near future. Although it varies between competent harbour authorities, qualification for a PEC may require around 10 to 18 berthing operations to be conducted under the supervision of a pilot. This could reasonably form part of the training for deck officers who have reached a suitable stage in their career development, but who are not yet employed as a master or first mate.

On the terminology of a deck officer, I want to be clear: we are not talking about junior ratings. We are talking about those officers who have navigational responsibilities. It usually takes between three and four years to qualify as a junior deck officer, so potential applicants will have experience at sea. Even then, it is most likely that only the more senior deck officers will be able to demonstrate the skills, experience and local knowledge required by a competent harbour authority.

The noble Lord, Lord Berkeley, suggested that there should be a stricter definition of eligibility tied to definitions in the international standard of training, certification and watchkeeping code. However, mariners on domestic routes do not need to seek certification on this code. Such an approach would be unduly restrictive and certainly tighter than current arrangements. The national association for ports and shipping has agreed that it is preferable to use the definition of "deck officer" in this clause and provide guidance to the competent harbour authorities on the attributes and skills that might be sought in the Port Marine Safety Code's guide to good practice. The guide already recommends that a competent harbour authority should seek a certificate of competence from applicants. The Port Marine Safety Code steering group, mentioned by the noble Lord, Lord Greenway, composed of representatives from industry, trade unions, the pilots' associations, the Government and other maritime experts, has agreed to establish a subgroup to consider and recommend any enhancements required for the guide. This will enable competent harbour authorities to have access to the best advice about the qualifications that could be expected of a successful applicant.

The noble Lord, Lord Berkeley, talked about the unwelcome aspects of competition. This is always a concern, but the noble Lord will know perfectly well that it arises in many areas of commercial activity. However, I would also be very surprised indeed if the regular pilots did not report any concerns regarding the inappropriate grant of a PEC to the MCA, as I have already said. The noble Lord, Lord Rosser, sounded as if he is supporting the noble Lord, Lord Berkeley, in his amendment. I would remind the noble Lord that this Bill has been in gestation for many years, as he well knows. The provisions in Clause 2 were clear Labour government policy, and no doubt responsible and experienced Labour Ministers were satisfied about its legality. Indeed, Jim

Fitzpatrick MP said in the other place that the Opposition would look foolish if they opposed the Bill and that, "it would be churlish of us not to support it. It contains many positive elements".—[Official Report, Commons, Marine Navigation (No. 2) Bill Committee, 7/11/12; col. 4.]

However, I fully accept that noble Lords opposite are testing the policy and making sure that we have got it right. I am sorry that the letter to the noble Lord did take rather a long time to arrive, but there were quite a few questions to answer.

I think it was the noble Lord, Lord Rosser, who said that the regulations should not be unduly onerous. It is important to remember that a PEC can be limited to a specific ship and a specific harbour, or even a specific portion of a harbour. The noble Lord asked about training and talked about the Port of Liverpool. The Committee will understand that the Port of Liverpool is a very complicated port with all sorts of difficulties. It is not surprising, therefore, that the training requirements to be a pilot for the Port of Liverpool are extensive. However, smaller ports will need less training. It is for the competent harbour authorities to determine what is required, as they do now. There is no change in the training requirements, only a proposal to change the eligibility, and training for a PEC will be similar to that for a pilot.

The noble Lord asked about the number of PEC holders that can be on a ship, which is a good point. He suggested that there could be numerous PEC holders on a ship, but that they would not have sufficient experience. It is not clear to me why a shipping company would want to incur the cost of PEC training and go to the effort of training officers if there was insufficient opportunity for them to exercise the certificate. Furthermore, if the competent harbour authorities believe that a PEC holder was a bit rusty and did not have enough experience, they may pay greater attention to the reassessment process. There will always be the alternative for a master to take on board a maritime pilot if circumstances mean that none of the PEC holders on the ship are available to pilot it because of hours worked or if the structure of the crew does not permit it. If a suitably qualified person is available, there is no justifiable reason to prevent them from holding a PEC and piloting the ship simply because they do not have the right job title.

2.45 pm

Finally, the ship's captain will remain solely responsible for the safe passage of their vessel, whoever is piloting it—whether a PEC holder, maritime pilot or the captain themselves. I well recall one of my father's war stories from when he served in the Merchant Navy, when the master of a ship did indeed overrule the pilot. I imagine from time to time that there are discussions between the pilot and the master. The master might say, "Are you sure?", but that is something the pilot and the master can easily accommodate. We are not proposing to change the heavy responsibility of the master of a ship, so I hope that the noble Lord will, in due course, be able to withdraw his opposition to Clause 2.

Baroness Wilcox:

My Lords, I concur with the excellent points made by my noble friend. The clause will not reduce the standards required by the competent harbour

authorities of applicants for a pilotage exemption certificate. It simply states that deck officers and members of the crew with navigation responsibilities can hold a certificate if—and only if—they meet those standards.

I met the chairman of the Maritime Pilots' Association, in the company of the noble Lord, Lord Berkeley, and he assured me that he would work with the Port Marine Safety Code Steering Group to provide the best advice for competent harbour authorities on the qualifications that they should expect. I welcome that, as I hope that the House will, coming from such an authoritative group with such a fine history. I welcome that support from the UK Maritime Pilots' Association and I support this clause standing part of the Bill.

Lord Berkeley:

I am grateful to all noble Lords who have taken part in this short debate and to the noble Earl, Lord Attlee, for the very full answers that he gave. Many of them were very helpful, but one thing that was conspicuously missing was that although there was a lot of talk about training, there was not so much about management responsibility. The key to a successful outcome is to ensure that PEC holders have experience of being in a senior management position on a ship.

As an example, many times in the course of this debate and others we have talked about a famous dredging company in the Thames Estuary. I will quote briefly from a letter that I, and perhaps others, have received from a pilot about this. He says that he knows the company and its working pattern well. He writes:

"The Master likes to do dredging at sea and the Chief Officer normally does discharge of aggregate"

—on the quay. He continues:

"They want the Junior Officer to pilot and navigate in between. I asked one of the Captains of this company why the Junior Officer couldn't do the discharge or the dredging at sea. Both operations he would be qualified for. The answer was because he/she is not trusted in those roles".

This is from the captain of one of the ships. If he is not trusted to do the discharge at a quay, or to dredge in the sea, it is a bit odd to think that he ought to be capable of having a pilotage exemption certificate to be able to pilot the ship up and around the Thames. We all remember what happened when the "Bowbelle" and the "Marchioness" had a collision.

Earl Attlee:

My Lords, if the officer was not trustworthy, the competent harbour authority would not grant him a PEC.

Lord Berkeley:

Let us hope so. If it was the Port of London Authority, I am sure that that would be the case. I have more doubts about other authorities. There is also the question of ensuring that we do not confuse junior officers with junior ratings, as there were one or two comments about that.

However, we have had a good debate. I would have liked the Minister to have given a definition on the record that the deck officer should be a person who is,

"engaged on board at Management level holding an STCW A-11/2 Certificate

of Competency”,
or other appropriate qualification, which would have covered the inland waterways issue. But he will not give that, and at this time of day it is not really appropriate to seek the opinion of the House, because we would never get home tonight. So I leave it at that.

Clause 2 agreed.

Clauses 3 and 4 agreed.

Clause 5 : Harbour directions

Amendments A1 and A2 not moved.

Amendment 1

Moved by

Lord Eames

1: Clause 5, page 4, line 21, at end insert—

“(8) An order designating a harbour authority shall not be made unless the Welsh Ministers, the Secretary of State or the Scottish Ministers, as the case may be, are satisfied that the harbour authority has in place appropriate procedures for resolving any disputes that may arise in relation to a proposed harbour direction.”

Lord Eames:

My Lords, I have tabled this amendment to reflect the concerns that were expressed in the debate in another place on this aspect of the Bill. I again refer to my indication of interest as a member of the RYA.

As articulated in the debate in the other place, under Clause 5 of the Bill an unelected “designated harbour authority” would have greater power to create new criminal offences than a democratically elected local authority. Secondly, harbour authorities are generally not well placed or adequately resourced to create new criminal offences, and the proposed power to create new criminal offences contains none of the supervisory safeguards usually imposed in relation to lawmaking bodies in a democratic society.

It is a key principle of the Government’s localism policy that power should be placed back in the hands of individuals, communities and councils, and where such power is to be exercised by local institutions such institutions should be subject to the democratic checks and balances enabled by full transparency. However, many harbour authorities are not democratically accountable and are not subject to the Freedom of Information Act 2000. It would run counter to basic democratic principles and the Government’s own localism policy to grant an unelected designated harbour authority lawmaking powers that are not subject to democratic checks and balances and full transparency.

Shortly after tabling this amendment, I learnt of the discussions that took place no later than yesterday on the whole question of a code of conduct on harbour directions. That discussion was greatly welcomed by those who were telling me of their concerns, and the RYA would like it placed on the record that it felt this had moved the whole problem a long way. On behalf of the RYA, I pay a very warm tribute to the two Ministers involved for the way in which they facilitated that development in the past 48 hours.

However, in moving this amendment, I still have to ask certain questions regarding the code of conduct. First, are the Government prepared to implement this code of conduct and to make provision for it in ways that can

be seen, heard and recognised across the marine industry as constituting acceptance by the Government? Those who attended the discussions to which I have referred welcomed the attendance of representatives of the department, but they seek an assurance on the record—and what I do with my amendment will be dependent on the answers that the Minister may be able to give me—that the Government are concerned to implement the code of conduct to which I have referred.

Secondly, if the code of conduct is in existence and there is general agreement on how it should be implemented, which is the reason for my first question to the Minister on whether that assurance can be given, what consequences does he envisage there being for any denial of that code of conduct, disobedience to it or even neglect of what it says? Does he see this as something that in the sense of what I referred to earlier might open the door to vast legal consequences? Will this code of conduct that was produced yesterday be sufficiently strong in the eyes of the Government to be implemented in terms that the courts can recognise and accept? In my experience of public life, I have often seen codes of conduct produced, not least on how we operate our work as this House, but it is one thing to have a code of conduct that people can feel warm about but quite another if that code of conduct is not given the wings of legal backing.

If I can be reassured on these points, I will be happy to withdraw this amendment, which is really a probing amendment to give the Minister the opportunity to assure the House, for the record, that the code of conduct points the way forward. I beg to move.

Lord Berkeley:

My Lords, I congratulate the noble and right reverend Lord on moving the amendment. It is a very useful probe; I shall probably have some more probes later. I have a copy of the code of conduct, which, as he said, was agreed yesterday lunchtime. That probably shows, but at least I understand that it has been agreed. It is unclear to me who makes the order designating a harbour authority as having the powers for general direction. Is it the Department for Transport? From reading the code of conduct, it seems to me as if the harbour authority makes its own designation, which I am sure is not right. It does not sound right anyway. I believe that the designation is under Section 40 of the Harbours Act, but what criteria will the Department for Transport, which I presume it will be, look at when deciding whether an applicant is a fit and proper organisation for having harbour direction powers. The purpose of the code of conduct and probably of Clause 5 is to enable harbours to be able to make directions without having to wait sometimes several years for the Department for Transport to approve them. I hope that the department, if it is to be the approving body under the new arrangements, will be a lot quicker than that. How long will it be and, as the noble and right reverend Lord asked, what enforcement will there be if things go wrong? I look forward to the Minister's response.

3 pm

Earl Attlee:

My Lords, I am grateful to the noble and right reverend Lord, Lord Eames, for explaining the reason behind this amendment. I was terrified that he would

not move his amendment because he observed that there was good news. When a similar amendment was debated in another place, the Shipping Minister was able to announce an initial agreement between port operators and users to develop a code of conduct on harbour directions. The intention was that this would provide a mechanism for resolving disputes. The Shipping Minister said:

“It is my expectation and the expectation of the Department for Transport that, when applying for a designation, a harbour authority would sign up to the code of practice”.—[Official Report, Commons, 30/11/2012; col. 542.] I am happy to say that since then, there have been very productive meetings between the Royal Yachting Association, the British Ports Association and the UK Major Ports Group, chaired by the UK Chamber of Shipping, to develop that code. At their meeting yesterday, agreement was reached on the terms of that code and I have personally laid a copy in the Library of the House. I was not prepared to fall into the trap of some noble Lord going into the Library and not finding the code of practice.

As expected, the code describes the establishment of a National Directions Panel to maintain the code, produce a set of model harbour directions that designated harbours can adopt as appropriate for their local circumstances, and consider how the power of the harbour directions is being used. The code also sets out how harbour directions should be consulted on with harbour users and how disputes can be resolved. The focus of the code is on resolution locally by the port and its users, but with the possibility of referral to an independent arbiter if agreement cannot be reached.

I believe that this is an excellent example of the benefits of non-statutory arrangements complementing legislation. I think that this is the right approach as we seek to reduce bureaucratic and inflexible central regulation and open up local decision-making. We do not want to gold-plate legislation, especially as there are already a number of safeguards in the Bill aimed at ensuring that the power of harbour directions is used responsibly.

In answer to the noble and right reverend Lord, Lord Eames, I repeat the Shipping Minister’s assurance that the Government would expect any harbour authority applying for designation to have agreed to the code of conduct. I do not anticipate that the code of conduct would be ignored in future years; furthermore, the designation order would be kept under review and a harbour authority could be de-designated if that were warranted.

The noble Lord, Lord Berkeley, asked whether the harbour authority would have to be a fit and proper person. The noble Lord will know that Ministers always take into consideration whether a person is a fit and proper person. Having said that, I hope that the noble and right reverend Lord, Lord Eames, will feel able to withdraw his amendment.

Lord Eames:

My Lords, I thank the Minister for his sympathetic response; I feel that we have the assurances that I sought on the record. I therefore beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Lord Popat:

My Lords, the Companion tells us, at paragraph 301:

"The House usually sits for public business on Mondays and Tuesdays at 2.30 p.m., on Wednesdays at 3 p.m. and on Thursdays at 11 a.m. The House also sits on Fridays at 10 a.m. when pressure of business makes it necessary. It is a firm convention that the House normally rises by about 10 p.m. on Mondays to Wednesdays, by about 7 p.m. on Thursdays, and by about 3 p.m. on Fridays".

It is my duty as a Whip today to move that the House do now resume.

House resumed.

House adjourned at 3.04 pm.