

<b>Title:</b> UK implementation of EU Directive 2009/20/EC on the insurance of ship-owners for maritime claims <b>IA No:</b> DfT00133 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 30/05/2012
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Andrew Kelly, Tel: 020 7944 5425, Andrew.kelly@dft.gsi.gov.uk	
<b>Summary: Intervention and Options</b>	<b>RPC:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
NQ	NQ	NQ	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**

There is a gap in the maritime liability insurance framework as there is no legal requirement for shipowners to maintain general third party insurance cover or other financial security against third party liabilities. There is thus the risk of the public sector, businesses and individuals not being able to recover costs associated with dealing with an incident or recompense for damages if the shipowner does not have sufficient assets at their disposal to meet their liabilities. The Directive seeks to address this risk and ensure that owners of seagoing ships have sufficient means to be able to meet liabilities resulting from incidents involving third parties. Government intervention is necessary to implement the Directive in the UK.

**What are the policy objectives and the intended effects?**

The policy objectives and intended effects are (i) to ensure that shipowners act responsibly by maintaining insurance to meet their third party liabilities; (ii) to provide better protection for victims of marine accidents; and (iii) to ensure a level playing field within the industry.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Doing nothing would mean the UK not implementing the Directive, and in all likelihood the European Commission instigating infraction proceedings against the UK. The key policy option that has been assessed is to introduce the proposed Regulations to implement the Directive in the UK and apply it to a) all UK flagged seagoing ships of 300 gross tonnage (gt) and above wherever they may be and b) all foreign flagged seagoing ships of 300gt and above that call at UK ports (Option 1). This would provide for compulsory insurance for those third party maritime claims not governed by any international Convention currently in force in the UK, and provide for an enforcement regime with appropriate penalties to ensure compliance. Option 1 is the preferred option because it would not materially impact on UK industry, would not go beyond the minimum EU requirements and would ensure compensation is available for the victims of maritime incidents. Several other potential policy options were considered but have been discounted.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 08/2017					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister: \_\_\_\_\_ Mike Penning MP \_\_\_\_\_ Date: \_\_\_\_\_ 30/7/12 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce the proposed Regulations to implement the Directive in the UK and apply it to a) all UK flagged seagoing ships of 300gt and above wherever they may be and b) all foreign flagged seagoing ships of 300gt and above that call at UK ports.

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	N/A	NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised costs by 'main affected groups'

Due to the limitations of the available evidence base (i.e. no additional evidence on the costs of Option 1 was provided by consultees as part of the consultation process), it has not been possible to monetise any of the costs that have been identified in this impact assessment (NQ means 'Not Quantified'). However, a full qualitative description of these costs is presented in the Evidence Base (pages 11 to 12) and the key non-monetised costs are summarised below.

### Other key non-monetised costs by 'main affected groups'

1. There is the potential for some shipowners to incur additional costs to obtain insurance. However, through discussions with industry and the MCA, it is understood that the vast majority of UK registered shipowners already maintain third party insurance satisfying the requirements of the Directive. 2. Financial institutions would incur additional costs associated with administering and taking the risk for maritime claims involving third party liabilities.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	N/A	NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

Due to the limitations of the available evidence base (i.e. no additional evidence on the benefits of Option 1 was provided by consultees as part of the consultation process), it has not been possible to monetise any of the benefits that have been identified in this impact assessment. However, a full qualitative description of these benefits is presented in the Evidence Base (pages 9 to 10) and the key non-monetised benefits are summarised below.

### Other key non-monetised benefits by 'main affected groups'

1. It would improve financial security for victims in the event of an incident occurring. However, incidents involving uninsured ships in UK waters are rare. 2. There could be a benefit in terms of business recovery to a shipowner taking out insurance where otherwise they would not have, as they would transfer the financial risk of their liabilities in the event of an accident to financial institutions. 3. Financial institutions would receive additional insurance premiums.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

1. Due to the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits. 2. The magnitude of the costs and benefits would depend on the extent to which the ships affected currently have sufficient third party liability insurance. 3. The extent that the costs and benefits would represent costs and benefits to the UK is uncertain.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ		

## Evidence Base (for summary sheets)

The formal consultation was launched on 4<sup>th</sup> April 2012 and concluded on 16<sup>th</sup> May. Of 29 institutions and organisations that were invited to comment, only 6 took the opportunity to do so. Broadly speaking all respondents agreed with the approach that the UK is taking to transpose and apply Directive 2009/20/EC. Furthermore, respondents did not provide any additional evidence on the costs and benefits of the proposed Regulations (Option 1). Therefore, no changes have been made to the assessment of the costs and benefits of the proposed Regulations (Option 1) that is presented in this impact assessment following the consultation<sup>1</sup>.

## Section 1 – Definitions and Background

In this impact assessment reference to:

**‘The Directive’** means Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims. It is one of the eight measures that form the 3<sup>rd</sup> Maritime Safety Package (otherwise known as the *Erika III* package)<sup>2</sup> and was published in the Official Journal of the European Communities on 23 April 2009<sup>3</sup>. It requires owners of seagoing ships flying the flag of European Economic Area (EEA) Member State shipping registries, and seagoing ships entering a port in an EEA Member State (including non-EU ships), of 300 gross tonnage (gt) and above to have in place insurance to cover third party liabilities up to the limits established by the LLMC (see below section for further details). It does not include state owned or operated ships used for non-commercial purposes, such as warships.

**‘The LLMC’** means the consolidated text of the International Maritime Organisation’s (IMO) Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol<sup>4</sup>. Under the LLMC, a shipowner has the right to limit their liability in respect of various types of maritime claims. The limits of liability under LLMC start at 2 million SDR (Special Drawing Rights – explanation follows) for loss of life or personal injury and at 1 million SDR for property claims with additional amounts relating to the ships tonnage. The SDR is an artificial currency unit used by the International Monetary Fund. Its value is calculated according to the currency of a number of major industrialised nations and so its relative value in any one currency fluctuates. On November 16<sup>th</sup> 2011, 1 million SDR were worth roughly £990,500<sup>5</sup>.

**‘The CLC’** means the International Convention on Civil Liability for Oil Pollution 1992, which the UK is already a State party to and came into force in the UK on 30 May 1996. The CLC requires oil tankers carrying more than 2,000 tonnes of persistent oil (such as heavy fuel or crude oils) as cargo to have insurance or other financial security before entering the UK, subject to the shipowner’s right to limit liability under the LLMC.

**‘The Bunkers Convention’** means the International Convention on Civil Liabilities for Bunker Oil Pollution Damage 2001, which entered into force in the UK on 21 November 2008. This requires insurance or other financial security for all ships over 1,000 gross tonnage (gt) entering

---

<sup>1</sup> DfT Consultation

<http://www.dft.gov.uk/consultations/dft-2012-14>

<sup>2</sup> More information on the 3<sup>rd</sup> maritime safety package is available at

[http://ec.europa.eu/transport/maritime/safety/third\\_maritime\\_safety\\_package\\_en.htm](http://ec.europa.eu/transport/maritime/safety/third_maritime_safety_package_en.htm).

<sup>3</sup> Directive 2009/20/EC ( OJ L131, 28. 5. 2009, p. 128)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0128:0131:EN:PDF>

<sup>4</sup> IMO Convention of Limitations of Liability for Maritime Claims

[http://www.imo.org/about/conventions/listofconventions/pages/convention-on-limitation-of-liability-for-maritime-claims-\(llmc\).aspx](http://www.imo.org/about/conventions/listofconventions/pages/convention-on-limitation-of-liability-for-maritime-claims-(llmc).aspx)

<sup>5</sup> *SDR Interest Rate Calculation*, imf.org, Accessed 16 November 2011,

[http://www.imf.org/external/np/fin/data/param\\_rms\\_mth.aspx](http://www.imf.org/external/np/fin/data/param_rms_mth.aspx)

the UK. It introduces strict liability for pollution or associated preventative measures for all types of ships' fuel and lubricating oil. However, nothing detracts from or alters the shipowner's right to limit liability under the LLMC.

'IGP&I Clubs' is short for the International Group of Protection and Indemnity Clubs. Membership consists of mutual non-profit making organisations that provide insurance cover for third party liabilities for shipowners through a claim sharing agreement between themselves ("the Pooling Agreement"). According to statistics from Equasis, approximately 90% of the world's ocean-going fleet by tonnage and 83% by number are insured through them.

## Section 2 – Problem under Consideration

The problem which the Directive seeks to address is that at present there is a gap in the framework for maritime liability insurance because there is no legal requirement for shipowners to maintain insurance or other financial security to cover third party risks or damage on or from ships other than from the following:

- any tanker or other type of ship carrying more than 2,000gt of persistent oil (which can be crude oil, lubricating oil, liquid fuel or heavy diesel) as cargo (under the CLC, shipowners are strictly liable for persistent oil pollution damage but there is no requirement to maintain insurance where vessels carry less than 2,000gt of oil as cargo); and
- bunker pollution from ships over 1,000gt (under the Bunkers Convention, shipowners are strictly liable for bunker oil pollution damage but there is no requirement to maintain insurance where vessels are 1,000gt and under).

There is therefore no requirement for shipowners to maintain insurance to cover, for example, casualties to passengers or crew, wreck<sup>6</sup> removal, dock damage, and pollution outside the scope of the Bunkers Convention or the CLC.

Although it is understood from initial consultation with the IGP&I Clubs that the standard insurance taken out by the vast majority of UK ships would cover their third party liabilities in these respects, a single incident involving a ship where the owner is not able to meet their liabilities could have considerable consequences for those affected. It could lead to the Government, local authorities, businesses (of all sizes) and individuals not being able to recover costs associated with dealing with an incident or recompense for damages if the shipowner does not have sufficient assets at their disposal to meet their liabilities. In 1993, for example, there were three separate incidents involving the grounding of Russian fishing ships in UK waters. In total, the Government incurred over £700,000 in costs in responding to these incidents (£48,573, £5,367 and £655,453 respectively)<sup>7</sup> but was unable to recover its costs because the ships did not have insurance.

The European Maritime Safety Agency (EMSA) 'Maritime Accident Review 2010' (published on 5 July 2011<sup>8</sup>) reports that in 2010, approximately 20% of ships (around 128) involved in accidents in EU waters were reported to be under 500gt. This was down from around 23% in 2009 (around 130 ships). However, there is no breakdown of how many ships involved in accidents were smaller than 1000gt. Nonetheless, this data implies that a significant proportion of the vessels involved in accidents in EU waters currently have no legal obligation to hold general third party liability insurance. EMSA's review for maritime accidents for 2011 has not been published.

---

<sup>6</sup> E.g. A sunken or stranded ship, part of a sunken or stranded ship including any object that is or has been on board such a ship, any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or a ship that is about, or may reasonably be expected, to sink or to strand.

<sup>7</sup> Source: MCA

<sup>8</sup> EMSA 2010 Maritime Accident Review  
<http://www.emsa.europa.eu/news-a-press-centre/external-news/2-news/1219-maritime-accident-review-2010.html>

Some information on the risk of marine accidents is presented below to provide context.

According to EMSA's 'Maritime Accident Review 2010', there is a significant risk of marine accidents in UK waters. It highlighted the English Channel as a particular concern due to the volume and variety of marine activity there, as well as the Shetland Islands as an area of "high accident density". Furthermore, according to Marine Accident Investigation Branch (MAIB) statistics, there were 26 marine accidents<sup>9</sup> in UK waters in 2010 involving vessels between 300 and 1,000gt (both UK and non-UK flagged), up from 24 in 2009. 21 and 17 of these, respectively involved UK ships. 9 of these caused damage to other objects or vessels and 3 of these may have resulted in pollution.

More generally, EMSA reported that 61 people lost their lives on ships operating in and around EU waters in 2010 (compared with 52 in 2009 and 82 in both 2008 and 2007 – see Annex A, Table 1). There were no major passenger ship accidents reported in and around EU waters, with loss of (passenger) life standing at 7 (compared with 4 in 2009, 6 in 2008 and 10 in 2007). However, there were several accidents where the consequences could have been a lot worse and this continues to be a cause for concern because there were hundreds of passengers on the ships, and any one of the accidents could have led to a disaster.

### **Section 3 – Rationale for intervention**

There is currently nothing to compel owners of ships under 1000gt to take out general third party liability insurance and owners of ships over 1000gt to take out third party liability insurance in relation to liabilities other than those arising as a result of the Bunkers Convention or the CLC. So, there is no way of knowing for certain whether they have the financial means to meet their liabilities in the event of an incident.

In the absence of Government intervention, there remains a risk that shipowners will decide not to take out third party liability insurance. A desire to cut costs in an attempt to gain a competitive advantage could be the main driving force behind such a decision. Not taking out such insurance could lead to the Government, local authorities, businesses (of all sizes) and individuals having to go through complex legal processes to seek recompense for the costs they incur, but with no guarantee that the shipowner would have sufficient assets at their disposal to meet their liabilities at the end of them. The resulting costs could potentially be significant as illustrated by the examples given in Section 2.

The UK is required under its commitments to the EU to implement the Directive by 1 January 2012. In effect, implementing the Directive in the UK would complement the implementation of the Bunkers and CLC Conventions and in due course, the expansion of the insurance and liability framework through the implementation of the 2002 Athens Protocol, the Wreck Removal Convention, and the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS protocol). It would also provide an interim arrangement until such time as these international Conventions enter into force in the UK.

In addition, the Government considers that setting the threshold at 300gt for a compulsory insurance requirement would also strike a proper balance between the duties to comply with international obligations to protect the marine environment under the United Nations Law of the Sea (UNCLOS) which was adopted in 1982 and the Protocol of 1978 to the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL), while ensuring that shipowners do have the financial means to meet their liabilities. This is consistent with the

---

<sup>9</sup> As defined in Section 3 of The Merchant Shipping (Accident Reporting and Investigation) Regulations 2005

'polluter pays' principle<sup>10</sup> and the Government believes that it is a proportionate measure that also promotes the UK's wider responsibilities and duties as a port, flag and coastal state, much of which is enshrined in EU legislation (for example, Directive 2009/16/EC on port state control and Directive 2009/21/EC on compliance with flag state requirements).

## **Section 4 - Policy objectives**

The policy objectives are:

- (i) to ensure that shipowners act responsibly by maintaining insurance to meet their third party liabilities;
- (ii) to provide better protection for victims of marine accidents; and
- (iii) to ensure a level playing field within the industry.

These objectives can all be achieved by adopting a "do minimum" approach to the implementation of the Directive, which is already sensitive to the operation of small ships, and therefore by implication small businesses, because it does not apply to ships below 300gt.

## **Section 5 - Options**

### **5.1. Do nothing (the counterfactual)**

In effect, this would mean the UK not implementing the Directive, and in all likelihood the European Commission instigating infraction proceedings against the UK.

There would be no additional costs to UK shipowners operating solely in UK waters. However, any UK registered ships wishing to visit a port in another EU/EEA Member State that has implemented the Directive would still be required to comply with the insurance requirements of the Directive, as such a State must ensure any ship, EU/EEA or otherwise, has the required insurance.

UK shipowners would continue to be liable for third party claims up to the limits established under the LLMC, as set down in the Merchant Shipping Act 1995 as amended, but they would not be required to maintain insurance (or other financial security) to cover those third party liabilities not already governed by any international Conventions currently in force in the UK.

An International Maritime Organisation (IMO) resolution, adopted in November 1999, encouraged owners of seagoing ships to maintain adequate insurance to meet their liabilities, and to ensure that their ships carry on board a certificate issued by the insurer. The Maritime Coastguard Agency (MCA) set out these voluntary guidelines in Marine Guidance Note (MGN) 135(M). The Government has urged owners of ships of 300gt and above to comply with this recommendatory notice.

It is understood from initial consultations with the IGP&I Clubs and the Chamber of Shipping that the vast majority of owners of UK ships of 300gt and above have heeded this advice and maintain third party liability insurance as standard. However, it is not possible to say whether this is true of owners of foreign flagged ships, especially those between 300gt and 1000gt.

Owners of ships in excess of 1000gt are required to maintain insurance in order to comply with the Bunkers Convention (and tankers carrying in excess of 2000gt of persistent oil the CLC Convention), and the IGP&I Clubs and the Chamber of Shipping understand that they will

---

<sup>10</sup> The 'polluter pays' principle is a widely accepted international principle setting out that the polluter should, in principle, bear the cost of pollution. It is one of the 27 principles set out in the Rio Declaration on Environment and Development agreed at the The United Nations Conference on Environment and Development ('Earth Summit') in 1992.

generally take out broader liability insurance policies (which is provided as standard cover by the members of the IGP&I Clubs) to cover potential claims. Compliance with the Bunkers and CLC Conventions is almost universal amongst the UK fleet. There were 40 instances where the UK's Port State Control authorities identified deficiencies with the State certificates associated with the Bunkers and CLC Conventions (for example, a shipowner failing to produce the State certificate) in the period November 2007 to February 2011; to put in this in perspective, there were approximately 27,000 inspections of UK and non-UK vessels during 2008 to 2010. Of the 11 instances where a ship had to be detained until the situation was rectified, none involved UK flagged ships (but UK flagged ships did account for 22 of the remaining 29 deficiencies). There have been no instances of summary convictions against either a UK or non-UK flagged ship. Nonetheless, there is nothing to compel the owners of these ships to take out broader third party liability insurance or the owners of other ships to take out any third party liability insurance, so there is no way of knowing for certain whether they have the financial means to meet their liabilities in the event of an incident, but it is assumed that vessels within scope of the insurance provisions of the CLC and Bunkers Conventions will generally be in compliance with the Directive.

**5.2. Option 1: Introduce the proposed Regulations to implement the Directive in the UK and apply it to a) all UK flagged seagoing ships of 300gt and above wherever they may be and b) all foreign flagged seagoing ships of 300gt and above that call at UK ports**

This is the preferred option. Implementing the Directive in the UK in this manner would improve financial security for victims by requiring shipowners to maintain third party liability insurance for all affected ships up to the limits established by the LLMC. Standardising the level of insurance cover required in this way would also help to create a level playing field within the industry and throughout the EU/EEA.

Implementing the Directive in the UK would complement the existing international regimes that require compulsory insurance (Bunkers and CLC Conventions) and, in due course, the implementation of the 2002 Athens Protocol, the 2010 HNS Protocol and the Wreck Removal Convention. It would also provide an interim arrangement until such time as these international Conventions enter into force in the UK. However, implementing the Directive in the UK would not impose any additional third party liabilities on shipowners, nor would it provide for a right of direct action against the insurer.

New implementing secondary legislation is needed to give the requirements of the Directive the force of law in the UK. It would provide for compulsory insurance for those third party maritime claims not governed by any international Convention currently in force in the UK, and provide for an enforcement regime with appropriate penalties to ensure compliance.

The impacts of Option 1 on different groups are described below.

**a) Shipowners of seagoing ships of 300gt and above**

Under the proposed Regulations, the owners of all affected ships (i.e. all UK flagged seagoing ships of 300gt and above wherever they may be, and all foreign flagged seagoing ships of 300gt and above that call at UK ports) would need to maintain insurance or other financial security to cover their third party liabilities and ensure that the certificate of insurance (or certificate of entry, which is a document provided to the ship by the insurer and gives an overview of what liabilities the ship has been covered against) or other financial security is carried on board the ship. Initial consultation with the IGP&I Clubs and the Chamber of Shipping confirms that UK shipowners already maintain insurance of this sort and the consultees mentioned noted that they would be surprised if any did not as this is an accepted industry standard. The requirement to carry this certificate would therefore be unlikely to lead to any significant additional costs for UK shipowners. No legal or licensing costs have been identified.

In particular, the shipping and insurance industries have confirmed that the usual way for shipowners to comply with the requirements under the Bunkers and CLC Conventions (i.e. for ships in excess of 1000gt and tankers carrying 2000gt of persistent oil) is to take out broader general third party liability insurance, which would typically satisfy the requirements of the Directive. Therefore, it is considered that the ships that would be most likely not to have insurance before the Directive enters into force would be those between 300gt to 1000gt. Nonetheless, it is understood from initial consultations with the IGP&I clubs and the Chamber of Shipping that the vast majority of owners of UK ships of 300gt and above also maintain third party liability insurance as standard.

At the end of September 2011, the UK ship registry had approximately 323 ships on the UK flag from 300gt to 1000gt, and approximately 740 ships above 1000gt. Under the proposed Regulations, the requirement to hold insurance would apply to all UK registered seagoing ships of 300gt and above.

Owners of all foreign flagged seagoing ships of 300gt and above that enter or leave a UK port would also be required to maintain insurance or other adequate financial security to comply with the requirements specified in the EU Directive.

It is uncertain, however, to what extent the flag state (state in which a vessel is registered) represents the nationality of the shipowner, and therefore where the impacts on business would fall. UK owned ships are often registered outside the UK and ships owned by non-UK businesses can be registered in the UK. The proportion of ships affected which are owned by UK businesses is therefore uncertain.

Compliance would be verified by Port State Control (PSC) inspections.

#### ***b) Maritime and Coastguard Agency (MCA)***

The MCA carries out PSC functions on ships entering UK ports. The PSC checks would be extended to ensure that seagoing ships of 300gt and above carry the certificate of insurance (or certificate of entry) or other financial security on board. Under the CLC and Bunkers Conventions, State Certificates are required to be carried on board ships attesting that the appropriate insurance is in place. Therefore, the MCA already has a well established system in place for checking that ships coming into UK ports carry appropriate paperwork. This is a very minor change for the MCA.

#### ***c) Providers of Financial Services***

The members of the International Group of Protection and Indemnity Clubs (IGP&I Clubs) already insure over 90% of the world's ocean-going tonnage. The IGP&I Clubs have confirmed that they do not consider that the implementation of the Directive in the UK would result in an additional cost to those shipowners who already carry third party liability insurance.

For the members of the IGP&I Clubs and other providers of maritime insurance, there would be very little change, as they would be able to provide insurance in compliance with the Directive in a standard "off the shelf" package.

However, these statements rely on the assumption that the Directive would be implemented in a way which does not onerously apply to every conceivable maritime claim subject to limitation under the LLMC. Indeed, if it was the intention of the Government to implement the Directive in a more onerous way, which it is not, then shipowners would need to take out additional cover at additional cost over and above what is currently provided, for example, by the members of the IGP&I Clubs. It would also put them at a competitive disadvantage to their EU/EEA competitors because of the way in which a number of other EU/EEA states are known to be interpreting the



Directive. In addition, financial institutions would face familiarisation costs with the Regulations and would perhaps face costs in developing more comprehensive insurance policies.

### **5.3. *Alternative options that have been discounted***

The option to extend the application of the Directive to all foreign flagged seagoing ships whilst on innocent passage through UK territorial waters (i.e. when they do not stop at a UK port) was considered but discounted because this would not be consistent with international law (the United Nations Law of the Sea 1982).

Another option that was considered was to 'gold plate' implementation by including non-seagoing ships of 300gt and above on inland waterways in scope of the Directive. However, the UK does not generally apply EU legislation to vessels on inland waterways unless it is a specific legislative requirement. This is partly due to the fact that the UK does not have a heavy flow of vessel traffic on inland waterways (for instance in comparison with the Rhine). This option was also discounted because ships of 300gt and above will generally be seagoing anyway. Some vessels do exist that are not seagoing but are 300gt and above – for example, some of the services to the Isle of Wight. Whilst exact numbers are not available, the MCA considers the number of non-seagoing vessels of 300gt and above to be small in comparison to seagoing vessels of 300gt and above.

## **Section 6 – Cost and benefits of the proposed Regulations (Option 1)**

Due to the limitations of the available evidence base, it has not been possible to monetise any of the costs or benefits of the proposed Regulations (Option 1). A full qualitative description of the costs and benefits has therefore been provided below.

As indicated at the beginning of this Impact Assessment, the consultation provided consultees with the opportunity to submit any additional evidence on the costs and benefits of the proposed Regulations (Option 1). However, no additional evidence has been provided, nor did consultees make any comment regarding our assessment of the costs and benefits of the proposed Regulations (Option 1). Given that there have not been any improvements to the available evidence base, no changes have been made to our assessment of the costs and benefits of the proposed Regulations (Option 1) following the consultation.

### **6.1. *Benefits of Option 1***

#### **6.1.1. *Benefits to victims of incidents, safety and the environment***

Requiring shipowners to maintain third party liability insurance for all affected ships (i.e. all UK flagged seagoing ships of 300gt and above wherever they may be, and all foreign flagged seagoing ships of 300gt and above that call at UK ports) up to the limits established by the LLMC would improve financial security for victims in the event of an incident occurring. However, thankfully, incidents involving uninsured ships in UK waters are rare, with no cases which the DfT is aware of since the late 1990s.

Having insurance in place would not prevent an accident occurring in the first place nor directly prevent substandard ships from operating. However, insurers are more likely to offer incentives to shipowners for quality shipping (for example, when calculating insurance premiums), so it is possible that shipowners might be encouraged to operate higher quality ships in an effort to reduce their insurance costs. This could help contribute to an improvement in ship standards, which could potentially benefit the marine environment because there would be less risk of pollution, and lead to improvements in the safety of the crew and passengers, through the operation of well maintained ships. However, in initial consultations with the IGP&I clubs, they indicated that they expected improvements in the quality of shipping from the Directive to be

marginal, if there are any at all. Furthermore, it is not expected that there will be any ships operating from the UK which would be uninsurable.

Given that no evidence is currently available on the scale of these potential benefits, it has not been possible to monetise these potential benefits in this impact assessment at this stage.

### **6.1.2. Benefits to the Shipping Industry**

In the absence of Government intervention, there remains a risk that shipowners will decide not to take out insurance, as explained in the “Rationale for Government Intervention” section. The introduction of compulsory insurance would mitigate this risk. It would standardise the requirement to have insurance, including the level of cover required (up to the limits established by the LLMC), thus helping to create a level playing field within the industry and throughout the EU/EEA by effectively removing any cost advantage of operating an uninsured vessel.

There could be a benefit in terms of business recovery to a shipowner taking out insurance where otherwise they would not have as they would transfer the financial risk of their liabilities in the event of an accident to the IGP&I clubs. The costs of third party liabilities can be very significant, potentially running into millions of pounds – for example, for claims other than loss of life or personal injury, the limit under LLMC for a vessel of 70,000 gt is around 24.2 million SDR (around £24.0 million as at November 16<sup>th</sup> 2011) and every extra gt over 70,000 adds 200 SDR (around £198 as at November 16<sup>th</sup> 2011) to that limit. Several examples of the size of liabilities resulting from marine accidents in practice are the Braer in 1993 (£2.7 million), The Sea Empress in 1996 (£11.4 million) and the MSC Napoli (£2.7 million)<sup>11</sup>. Although these accidents are not examples of where insurance was not in place, they demonstrate the potential size of liabilities as a consequence of marine accidents. Insurance can cover these liabilities and can therefore potentially result in benefits for business recovery in the event of an incident.

There is currently no way of ascertaining how many seagoing ships between 300gt and 1000gt do not currently have insurance, and the value of third party liabilities differs in each incident and is information we do not have.

Furthermore, any benefits to the owners of UK and non-UK registered ships would only represent a benefit to the UK if they fall on UK entities (e.g. UK businesses or consumers). However, not all UK registered ships are UK-owned, and some non-UK registered ships are UK-owned. So the extent that this would be the case is uncertain.

Therefore, it has not been possible to monetise this benefit in this impact assessment at this stage.

### **6.1.3. Benefits to Financial Institutions**

For the members of the IGP&I Clubs and other financial institutions providing maritime insurance, they would receive the extra insurance premiums from any ships which require insurance where previously they had none. The increase in insurance premiums, however, would represent a transfer from shipowners. This is because the IGP&I clubs are non-profit making, so the premiums are calculated to cover the cost of them taking on a shipowner’s risk and any other costs. The net benefit to the members of the IGP&I Clubs is therefore expected to be zero.

---

<sup>11</sup> Source: MCA

## **6.2. Costs of Option 1**

### **6.2.1. Compliance Costs to the Shipping Industry**

There is the potential for the owners of a) UK registered seagoing ships of 300gt and above and b) non-UK registered seagoing ships of 300gt and above that call at UK ports to incur additional costs as a result of the proposed Regulations.

However, as previously mentioned, through discussions with industry and the MCA, it is understood that the vast majority of UK registered shipowners already maintain third party insurance satisfying the requirements of the Directive, including for ships between 300gt and 1000gt. It is therefore considered that the impact of implementing the Directive in the UK is likely to be small.

The IGP&I Clubs do not consider that the implementation of the Directive in the UK would result in an additional cost burden to shipowners who already carry third party liability insurance and have said that it is unlikely the UK registered shipowners' premiums would increase as a direct consequence of entry into force of the Directive.

It was made clear during initial consultation with the IGP&I clubs and the Chamber of Shipping that the cost of insurance is determined by a wide range of factors, including the size and type of ship, number of passengers carried, flag State, Port State Control risk categorisation (whereby information on vessels and flags likely to fall short of maintenance and safety requirement are shared between ports / countries), historical claims record, recent significant events and market capacity. Any of these aspects could have an impact on the cost of insurance faced by shipowners. The IGP&I Clubs have indicated that the historical claims record of a shipowner is likely to have the most significant impact on the cost of insurance.

Exactly how many ships entering UK ports that do not have insurance complying with the Directive is not known, simply because there is no requirement to produce evidence of insurance outside the regimes associated with the Bunkers and CLC Conventions. However, it is understood from initial consultations with the IGP&I clubs and the Chamber of Shipping that most ships will comply with the Bunkers and CLC conventions by taking out third party liability insurance, as explained in Section 5.1 (the 'do nothing' option). It is therefore assumed that vessels within scope of the Bunkers and CLC conventions will also be compliant with the Directive.

For owners of seagoing ships of 300gt and above but under 1000gt who do not require insurance under current legislation and who do not maintain voluntary insurance, there would be an additional cost of insurance premiums. However, even if the UK did not implement the Directive, the compulsory insurance requirements would still apply to those ships entering or leaving ports of EU/EEA Member States that had ratified the EU Directive. Therefore, the extent that the proposed Regulations would lead to additional costs to these vessels is uncertain.

Furthermore, any costs to the owners of UK and non-UK registered ships would only represent a cost to the UK if they fall on UK entities (e.g. UK businesses or consumers). However, not all UK registered ships are UK-owned, and some non-UK registered ships are UK-owned. Therefore, the extent that this would be the case is uncertain.

Given the limitations of the available evidence base explained above, it has not been possible to monetise the costs to the UK in this impact assessment at this stage.

### **6.2.2. Familiarisation Costs to the Shipping Industry**

Some businesses may incur familiarisation costs due to the need for operators to familiarise themselves with the proposed Regulations. However, it should be noted that no evidence is

currently available on this issue. Therefore, this cost has not been monetised for the purpose of this assessment as both the time that it would take to familiarise, and the number of businesses that would need to do this, are uncertain.

### **6.2.3. Costs to Financial Institutions**

It was made clear in consultation with the IGP&I clubs that insurance providers already provide third party maritime insurance which would fulfil the requirements of the Directive as standard, so there would be no familiarisation cost or development cost of a new policy for them. However, they would incur the extra cost of administering and taking the risk for maritime claims involving third party liabilities. They would, however, cover this cost within the calculation of the insurance premium. The members of the IGP&I Clubs have minimal exposure to risks of large compensation claims, as the premise of the members is that they “pool” the risk of each others’ large claims in a claim sharing agreement between themselves. Furthermore, the members of the IGP&I clubs are non-profit making, so the premiums are calculated to cover the cost of them taking on a shipowner’s risk and any other costs. The net cost to the members of the IGP&I Clubs is therefore expected to be zero.

### **6.2.4. Costs to Maritime and Coastguard Agency**

The MCA would be required to check that seagoing ships of 300gt and above entering UK ports carry a certificate of insurance complying with the requirements of the Directive. This would be carried out as part of the existing Port State Control procedures, and hence is not expected to impose any additional costs on the MCA.

Familiarisation costs are also expected to be insignificant as the necessary training would be absorbed into that already undertaken for Port State Control procedures.

### **6.2.5. Summary of costs of Option 1**

To summarise, it is not anticipated that Option 1 would result in significant additional costs compared to the ‘Do nothing’ scenario. This is because it is considered that the Directive is formalising an existing industry standard, and any seagoing ships wishing to visit ports of other EU/EEA states who have implemented the Directive would need to hold third party liability insurance under the ‘Do Nothing’ scenario.

## **7. Specific Impact Tests**

### **7.1. Competition Assessment**

It is considered that UK shipowners would not be placed under a significant competitive disadvantage by the proposed Regulations as no requirements would be placed on the shipowners except for maintaining insurance (and providing evidence of insurance onboard ships), and it is understood from discussions with industry that the great majority of UK registered ships of 300gt and above already have insurance, although robust data is not available to confirm this. The Directive is to be implemented across the EU/EEA, so it would create a level playing field across the EU for maritime insurance. Not implementing the Directive would not be expected to yield competitive benefits for UK industry, for the reasons explained in the costs and benefits section. We do not anticipate any impact on the competitiveness of the UK insurance industry as it was made clear in consultation with the IGP&I clubs that insurance providers already provide third party maritime insurance which would fulfil the requirements of the Directive as standard. Therefore, there would be no change to the insurance products that they provide to shipowners.

## **7.2 *Small Firms Impact Test***

The Insurance Directive is EU legislation therefore an exemption is not possible for micro or small businesses as no such exemption is contained in the text of the Directive itself. However, implementation of the Directive is not expected to impact on many small businesses given that vessels of less than 300gt are outside of the scope of the Directive, and it is likely that the majority of small firms will own ships of less than 300gt. 300gt is the internationally accepted threshold below which it is considered many regulations would be disproportionately burdensome on smaller vessels / enterprises. Nonetheless, there is some evidence that large firms owning many ships benefit from economies of scale in terms of insurance compared to small firms.

## **7.3 *Equalities Assessment***

No equalities concerns have been identified. All ships and shipowners within the scope of the Directive would be treated equally regardless of nationality, as insurance certificates are issued by the insurance provider and are equally available to ships of any nationality. Where the certificate is not in English, French or Spanish, ships would be required by the proposed Regulations to hold a certificate in one of these languages. This is not expected to affect any UK ships, and where this clause does come into effect, it is not expected to impose significant extra costs as the insurance issuer is expected to hold standard certificate texts in the required languages.

## **8. One-In, One-Out (OIOO)**

As this is an EU measure, it is out of scope of OIOO.

## **ANNEX A: TABLES FROM EMSA MARITIME ACCIDENT REVIEW 2010**

Table 1: Loss of life in the EU by ship type: 2007 to 2010

<b>LIVES LOST BY SHIP TYPE</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cargo Ships	20	24	19	17
Tankers	3	9	2	5
Container Ships	0	2	1	0
Passenger Ships	10	6	4	7
Fishing Vessels	31	30	16	20
Other Vessel Types	18	11	10	12
<b>TOTAL</b>	<b>82</b>	<b>82</b>	<b>52</b>	<b>61</b>

Table 2: Contacts / Collisions in the EU by ship type: 2007 to 2010

<b>CONTACTS / COLLISIONS BY SHIP TYPE</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cargo Ships	132	120	93	97
Tankers	23	31	30	34
Container Ships	42	31	30	23
Passenger Ships	73	77	80	70
Fishing Vessels	17	14	22	15
Other Vessel Types	17	35	37	50
<b>TOTAL</b>	<b>304</b>	<b>308</b>	<b>292</b>	<b>289</b>

Table 3: Fires and explosions in the EU by ship type: 2007 to 2010

<b>FIRES/EXPLOSIONS BY SHIP TYPE</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cargo Ships	29	26	30	17
Tankers	11	11	2	7
Container Ships	3	4	2	4
Passenger Ships				
Fishing Vessels	16	14	9	15
Other Vessel Types	15	17	13	10
<b>TOTAL</b>	<b>91</b>	<b>89</b>	<b>67</b>	<b>83</b>

Table 4: Sinkings in the EU by ship type: 2007 to 2010

<b>SINKING BY SHIP TYPE</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cargo Ships	11	10	6	6
Tankers	0	1	0	0
Container Ships	1	0	0	0
Passenger Ships	4	0	0	3
Fishing Vessels	27	29	18	18
Other Vessel Types	12	21	4	5
<b>TOTAL</b>	<b>55</b>	<b>61</b>	<b>28</b>	<b>32</b>

Table 5: Groundings in the EU by ship type: 2007 to 2010

<b>GROUNDINGS BY SHIP TYPE</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cargo Ships	108	115	76	72
Tankers	23	20	28	17
Container Ships	10	18	10	4
Passenger Ships	24	26	30	22
Fishing Vessels	14	20	20	16
Other Vessel Types	18	18	13	12
TOTAL	197	217	177	143