

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (COMPULSORY INSURANCE OF
SHIPOWNERS FOR MARITIME CLAIMS) REGULATION 2012

2012 No. 2267

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations seek to ensure that owners of all seagoing ships of 300 gross tonnage and above have in place third party liability insurance to cover the vast majority of third party claims of the type described as subject to limitation in the 1976 Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol. This is intended to guard against situations where a shipowner is liable for third party claims but has insufficient funds to pay.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Regulations transpose Directive 2009/20/EC on the insurance of shipowners for maritime claims (the "Insurance Directive") which entered into force across the EU on 1 January 2012. The Regulations apply to owners of all UK registered seagoing ships of 300 gross tonnes and above, wherever they may be, and owners of all non-UK registered seagoing ships of 300 gross tonnes and above that call at UK ports.

4.2 The objective of the Insurance Directive is to make mandatory the current shipping industry standard of having insurance which covers the vast majority of general third party maritime claims.

4.3 In the Directive and these Regulations, "insurance" means, for example, indemnity insurance of the type usually provided by members of the International Group of Protection and Indemnity (IGP&I) Clubs. These clubs are mutual, non-profit-making organisations that offer insurance for shipowners to cover their third party liabilities. Furthermore, shipowners also have the possibility, if they wish, to use self-insurance or some other form of financial security; provided that it can be proved that such alternative financial guarantees provide adequate cover for their liabilities. Any shipowner who wants to rely on this type of insurance would have to seek the prior written

approval from the Secretary of State before the ship enters United Kingdom waters.

4.3 The proposal that resulted in Directive 2009/20/EC was the subject of Explanatory Memorandum (EM) 5907/06. The House of Commons European Scrutiny Committee considered the EM on 8 March 2006. The Committee recommended that the document was politically important, and requested further information including reports on developments (21st Report, Session 2005-06). The House of Lords Select Committee on the European Union referred the EM to their Sub-Committee E at the 1243rd sift on 28 February 2006. The Chairman wrote to the Minister on 23 March 2006, holding the document under scrutiny pending sight of the Impact Assessment.

4.4 A Supplementary EM was submitted by the Department for Transport on 11 October 2007. The House of Commons European Scrutiny Committee considered the SEM on 7 November 2007. The Committee maintained its recommendation that the document was of political importance and did not clear it pending further developments (1st Report, Session 2007/08). The House of Lords Select Committee on the European Union referred the SEM to Sub-Committee E on 23 October 2007 (1300th sift). The Chairman wrote to the Minister on 15 November 2007 retaining the scrutiny reserve pending further developments.

4.5 A further EM 14486/07 was submitted on an amended proposal on 22 November 2007. The House of Commons European Scrutiny Committee considered the EM on 5 December 2007. The Committee maintained its recommendation that the document was of political importance and did not clear it pending further developments. The House of Lords Select Committee on the European Union referred the SEM to Sub-Committee E on 27 November 2007 at the 1304th sift. Ministerial letters were sent to the Committees on 10 July 2008, 1 October 2008, 28 October 2008, and 21 January 2009. The proposal cleared scrutiny in November 2008.

4.6 A Transposition Note is attached (at **Annex A**)

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There is currently nothing to compel owners of ships under 1000gt to take out general third party liability insurance, or for 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 International Convention on Civil Liability for Oil Pollution 1992 and the International Convention on Civil Liabilities for Bunker Oil Pollution Damage 2001. As a result, there is no way of being certain whether shipowners have the financial means to meet their liabilities in the event of an incident.

7.2 The European Maritime Safety Agency (EMSA) also reports that in 2010 approximately 20% of ships (around 128) involved in accidents in EU waters were reported to be under 500gt, which implies that a significant number of vessels involved in accidents in EU waters are currently under no legal obligation to hold general third party liability insurance.

7.3 In the absence of Government intervention, there remains a risk that shipowners will decide not to take out third party liability insurance. Such decisions may be driven by a desire to cut operational costs in an attempt to gain a financial advantage over their competitors. However, not taking out such insurance could, in the event of an incident, lead to the public sector, businesses and individuals not being able to recover costs associated with dealing with the incident, or to be able seek recompense for damages if the shipowner does not have sufficient assets at their disposal to meet their liabilities.

8. Consultation outcome

8.1 The insurance and shipping industries were consulted (4 April to 16 May 2012) on the Government's proposals for applying the requirements of the Insurance Directive to UK registered ships and non-UK registered ships of 300 gross tonnage and above. All respondents to the consultation broadly supported the UK approach and the way in which the Regulations had been drafted, in particular, that they envisaged that IGP&I clubs would issue certificates of insurance that will provide sufficient proof of such cover. Respondents also acknowledged that not every type of maritime claim was intended to be covered by the Insurance Directive.

8.2 Of the twenty-nine institutions and organisations that were invited to take part in the formal consultation, only six took the opportunity to do so. Although respondents had been invited to provide any new or additional evidence or information to help improve the quality of the cost and benefit analysis, no additional material was forthcoming. Nor did respondents have any further comments to make regarding the original assessments that were made and which had formed the original assumptions of the Impact Assessment.

8.3 There were responses regarding the possibility of shipowners providing alternatives to the normal kind of insurance usually provided through the IGP&I Clubs, for example, self-insurance or other proof of financial security necessary for a shipowner to meet their liabilities. There were concerns around enforcement and whether or not they should be extended to Masters of vessels for failure to produce evidence of insurance and, finally, respondents agreed to the approach to cover losses resulting from

delay in cargo, but only in such cases where the Hague Visby rules are incorporated in the carriage contract. Claims for delay to passengers or their luggage are usually subject to specific conditions, for example, where a delay follows an incident that affects the condition of the ship, or other incidents involving threat to the life, or health or safety of passengers. The Regulations are consistent with current insurance practices where such incidents are incorporated into such rules.

8.4 The summary of responses, as well as the Government's response to the points raised following the consultation can be found on the DfT site <http://www.dft.gov.uk/consultations/DfT-2012-14/>

9. Guidance

9.1 The Marine and Coastguard Agency have issued a Marine Information Note (MIN 442 (M)) to notify stakeholders of the forthcoming entry into force of Directive 2009/20/EC (and subsequent UK transposition introducing domestic Regulations).

10. Impact

10.1 It has not been possible to monetise any of the costs and benefits of the Regulations due to the limitations of the available evidence base. However, a qualitative analysis has been conducted which has concluded that there would likely be no significant costs to the UK, and that the UK industry should not be put at any significant competitive disadvantage as a result of the Regulation.

10.2 There will be no impact on the public sector. The MCA will be required to check that ships of 300gt and above entering UK ports carry a certificate of insurance complying with the requirements of the Regulations. Any familiarisation costs are expected to be insignificant, as the necessary training would be absorbed into normal Port State Control procedures

10.3 An Impact Assessment is attached to this memorandum (at **Annex B**) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The Directive applies only to ships of 300gt and over. Since it is unlikely that any small business would own ships above 300gt, they will remain outside the scope of the Directive and therefore will not be regulated. It is internationally accepted that attempting to regulate such vessels under this threshold would create a disproportionate burden on small businesses.

12. Monitoring & review

12.1 The Regulations include a provision requiring a statutory review to be held no later than five years after the Regulations have come into force.

13. Contact

Andrew Angel at the Department for Transport Tel: 020 7944 5452 or email: andrew.angel@dft.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note
(SI 2012 No. XXXX transposing Directive 2009/20/EC on the insurance of shipowners for maritime claims)

Article	Objective	Implementation	Responsibility
4	<p>Requires Member States to make sure that: (a) shipowners of ships flying its flag have the appropriate insurance to which this Directive refers in order to cover their ships and, (b) that ships not flying its flag also have the appropriate insurance whenever entering a port under the Member State's jurisdiction.</p> <p>Such insurance will be required to cover claims of the type described as subject to limitation under the 1976 International Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol.</p> <p>"Insurance" comprises of indemnity insurance of the type currently provided by members of the International Group of P&I Clubs or other effective forms of insurance (including proved self insurance) and financial security offering similar conditions of cover</p>	<p>Regulations 2, 3 and 4 implement article 4 of the Directive.</p>	<p>Secretary of State</p>
5	<p>Member States are required to establish a compliance and enforcement regime to ensure that shipowners and their ships comply with the rules. Compliance will consist of inspections, verification and checks of certificates.</p> <p>Furthermore, Member States may also expel such ships that do not carry the relevant insurance, provided that such expulsion does not contravene safety considerations. In cases where vessels are expelled, the Member State must notify the state where the ship is flagged, the European Commission and other EU Member States</p>	<p>Regulation 6 requires that the ship carry an insurance certificate or other documentation and that they be produced on demand. Regulation 7 provides that it is an offence for a ship to enter or leave a port in contravention of regulation 4 (the requirement to have insurance) or 6 (requirement to carry and produce documentation). Regulation 9 provides for the ship to be detained if anyone attempts to navigate it out of a port in contravention of regulation 4;</p> <p>These Regulations do not provide a</p>	<p>Secretary of State</p>

	Following an expulsion order Member States will refuse entry into ports until such ships are able to demonstrate that they have the aforesaid insurance	power for the Secretary of State to expel ships; Regulation 8 provides that the Secretary of State must refuse entry, into any UK port to any ship in respect of which an expulsion order has been issued by another EEA state.	
6	The existence of insurance is to be proved by the issuance of certificates by insurance providers.	Regulation 6 applies this requirement	Secretary of State
7	To support Article 5, Member States are required to establish an appropriate system of penalties for breach of national provisions put in place to support the Directive and take necessary measures to apply such penalties.	See above. Also, regulation 10 provides for arbitration in cases where there is a dispute about the validity of a ship's detention. The master of the vessel has a 21 day period within which to serve notice and an independent arbitrator will be appointed to the mutual agreement of both parties. Regulation 11 allows for compensation in cases where arbitration results in a detention order being overturned.	Secretary of State