

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (CARRIAGE OF PASSENGERS BY SEA)
REGULATIONS 2012

2012 No. 3152

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the Instrument**

2.1 The Regulations are made to support the operation of Regulation (EC) 392/2009 (“the EU Regulation”) which gives effect to the main provisions of the Athens Convention 1974, as last amended by the Protocol of 2002 relating to the Carriage of Passengers and their Luggage by Sea 1974 (“the Athens Convention”). The Athens Convention establishes a regime which allows carriers to limit their liability for loss of life or injury to passengers on international voyages. The Protocol of 2002 increases the liability limits for carriers of passengers by sea in the event of accidents involving loss of life or personal injury. It also requires such carriers to have compulsory insurance; and it provides claimants with the right of taking direct action against the insurers. The intended effect is to provide an enhanced framework of compensation in the event of death or personal injury to a passenger, or the loss of or damage to luggage when travelling by sea.

2.2 The EU Regulation creates parity for the passenger shipping sector and helps ensure that UK citizens have access to the same levels of compensation when travelling between two different EU Member States. As well as providing for compulsory insurance it also requires the provision of information relating to passenger’s rights under the EU Regulation to all passengers.

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

3.1 Regulation 4, which operates to disapply the EU Regulation from certain classes of ships operating on domestic voyages, comes into force on 31 December 2012 and therefore break the “21 day rule”. The remaining regulations which deal with the issue of certificates and provide for the enforcement of the EU Regulation come into effect on 12th January 2013.

3.2 The Department attaches considerable importance to complying with the rules of parliamentary procedure which are designed to ensure that legislation is subjected to proper scrutiny and did not take this step lightly. However, the Department is anxious to ensure that its long established policy of applying the maximum derogations from EU legislation is given effect and this is the basis on which it has published its consultation and prepared the Impact Assessment. In this case, it is of the opinion that if the EU

Regulation were to come into effect without a legislative instrument deferring the application of the EU Regulation to passenger ships operating on domestic voyages as permitted under article 11 of the EU Regulation it would not be possible to apply this derogation at a later date. This would cause considerable difficulties for affected carriers as the Department has previously indicated that it intended to apply these derogations to the maximum extent, for example in the Marine Information Notice referred to in paragraph 9. The Department notes that the effect of this provision is purely to preserve the status quo in respect of such ships and does not have the effect of imposing any new regulatory burden or legal liability.

3.3 The delay in making the regulations was due to a number of factors including difficulties in establishing the projected costs of applying the EU Regulation which was necessary to obtain the appropriate regulatory clearances and uncertainties within the insurance market as to whether appropriate insurance for War Risks would be available which have only been resolved very recently. If the requisite insurance had not been available the Department would not have considered it appropriate to make the Regulations in their current form. The Department apologises for the failure to observe the proper procedures.

4. Legislative Context

4.1 These Regulations support the operation of EU Regulation (EC) 392/2009 which will come into force on 31st December 2012. The EU Regulation gives effect, at EU level, to the International Maritime Organisation's Athens Convention 1974, as amended by the Athens Protocol of 2002. This will create parity for the passenger shipping sector across the EU and help ensure that UK citizens have access to the same levels of compensation and rights when travelling between different EU Member States.

4.2 Furthermore, these Regulations will, within the context of the EU legislation, apply to the carriage of passengers by sea within the United Kingdom (for example, between the UK mainland and the Northern Ireland) on board ships of Classes A and B as defined in article 4(1) of Directive 2009/45/EC. The definition in the Directive operates by reference to the sea areas in which the ship operates. Class B ships are passenger ships engaged on domestic voyages where they are at no point more than 20 miles from the line of coast. Class A ships are those on domestic voyages operating at greater distances from the coast. Member States are permitted to defer the application of the EU Regulation to Class A ships until 31st December 2015 and Class B ships until 31st December 2018.

4.4 The proposal that resulted in the EU Regulation was the subject of Explanatory Memorandum (EM) 6827/06, which was considered by the House of Commons European Scrutiny Committee on 19 July 2006. The Committee recommended that the document was of political interest and did not clear it pending further developments and the submission of a Regulatory Impact Assessment (36th Report, Session 2005-06, reference 27323). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B following the 1248th sif of 30 March 2006. Sub-Committee B considered the EM at its meeting on 24 April 2006. In his letter of 25 April 2006, further the Committee Chairman asked for news of any significant developments in the

dossier and for a Regulatory Impact Assessment, once sufficient information becomes available.

4.5 An amended proposal was the subject of EM 14302/07, which was accompanied by a partial Impact Assessment. The EM was considered by the House of Commons European Scrutiny Committee on 28 November 2007. The Committee recommended that the document was of political interest and cleared it (4th Report, Session 2007-8, reference 29040). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B following the 1303rd sift on 20 November 2007. The document was cleared from scrutiny on 26 November 2008 (Progress of Scrutiny 2, 2007-08).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 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 passenger carriers to obtain sufficiently effective insurance coverage for risks relating to the death of or injury to passengers carried at sea, or the loss of or damage to luggage. In the absence of Government intervention, there remains a risk that passenger carriers will not take out appropriate insurance coverage for these risks. Not taking out effective insurance could mean that victims of these types of incidents are unable to obtain compensation. The 2002 Protocol requires passenger carriers to hold a certain amount of insurance and introduces the right of direct action against insurers. This should make it easier for compensation to be obtained and reduce the risk that compensation would not be paid.

7.2 Furthermore, the existing limit of liability for claims relating to the death of or injury to passengers carried at sea is inadequate, which is likely to mean that the amount of compensation to be awarded to passengers in the event of an accident is not proportionate to the damage experienced. The 2002 Protocol raises this limit of liability and thus increases the maximum compensation that can be awarded to claimants.

7.3 The EU Regulation incorporates the Athens Convention into EU law. It also adopts the International Maritime Organisations' ("IMO") Reservation and Guidelines for the implementation of the Convention adopted by the Legal Committee if the IMO on 19th October 2006. The EU Regulation also applies the Athens Convention to carriage onboard EU Class A and B ships on domestic seagoing voyages as well as indicating that Member States may apply the EU Regulation to all domestic seagoing voyages. However, Member States are permitted to defer the application of the EU Regulation to Class A ships until 31st December 2015 and Class B ships until 31st December 2018. These Regulations defer the application of the EU Regulation to the maximum extent permitted.

7.4 Government intervention in the form of new legislation is needed to support operation of the EU Regulation in the UK, including setting out the procedure for the issue of State Certificates and establishing penalties in the event of non-compliance. It is also necessary legislate to ensure that the UK can take advantage of the derogations that are available in respect of domestic services.

8. Consultation outcome

8.1 The insurance and shipping industries were consulted (16 August to 28 September 2012) on the Government's proposals for applying the requirements of the EU Regulation to UK registered ships and non-UK registered ships. All respondents to the consultation broadly supported the UK approach and the way in which these Regulations had been drafted.

8.2 Of the thirty-four institutions and organisations that were invited to take part in the formal consultation, only five 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. In particular, the assessment of costs and benefits around the new insurance liabilities covering war and terrorism, was also considered to be commensurate with the views and information available to the industry sector.

8.3 The summary of responses, as well as the Government response to the points raised following the consultation can be found on the DFT site [Government Response to Consultation](#)

9. Guidance

9.1 The Marine and Coastguard Agency have issued a Marine Information Note (MIN 448(M)) to notify stakeholders of the forthcoming entry into force of the EU Regulation . This explains the main provisions of the EU Regulation and advises stakeholder of the need to obtain certificates. It also states that the application of the EU Regulation to domestic seagoing voyages will be deferred to the maximum possible extent.

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 way in which the EU Regulation has been applied in the UK.

10.2 There will be no impact on the public sector. The Maritime and Coastguard Agency, which is an executive agency of the Department, will be required to check that ships entering UK ports carry the appropriate level of war and non-war insurance cover which complies 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. The cost of administering the Port State Control certificates will be £31.00 annually per certificate and issued by MCA. This figure has been agreed with HM Treasury and will ensure full cost recovery

10.3 On the basis of the available evidence, and in the absence of any thing more substantive, it was been concluded that the measure is a 'low-cost' regulation and therefore met the criteria to make use of the "fast track" clearance procedure with the Regulatory Policy Committee (RPC). However, an Impact Assessment is attached to this memorandum (at **Annex A**) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 Whilst a carrier shall be liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the Athens Convention only requires carriers to have compulsory insurance if the ship is licensed to carry more than 12 passengers. The Athens Convention and the EU Regulation lay down a regime relating to liability and insurance for the carriage of passengers by sea. The UK defines sea, for the purposes of Merchant Shipping legislation as being seaward of categorised waters. Services on inland waterways such as rivers and lakes are therefore outside the scope of these policy options. It is considered that these two criteria help to significantly reduce the impact of these Regulations on small firms.

11.2 Passengers travelling on domestic seagoing passenger ships, other than those of EU Class A and B, would still have protection under the existing Athens Convention. This, however, is only a continuation of the *status quo* and should therefore not have any negative impact on small firms.

11.3 It is unlikely that operators of EU Class A and B domestic seagoing passenger services will already have insurance to cover their war/terrorism risk. An insurance product is currently being developed by the market and the UK has lobbied strongly for a product that takes into account the nature of domestic seagoing passenger services and that the product is accessible and appropriately priced.

12. Monitoring and review

12.1 The Regulations include a provision requiring a statutory review to be held no later than 12th January 2019, five years after the date on which the Regulations come fully into force.

13. Contact

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