Title: Post-Implementation Review of the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 **PIR No:** DfTPIR0027 **Lead department or agency:** Department for Transport **Contact for enquiries:** Andrew Angel (Tel: 07825 231803, Email: andrew.angel@dft.gsi.gov.uk)	Post Implementation Review **Source of intervention:** EU **Type of regulation:** Secondary legislation **Type of review:** Statutory - other **Date measure came into force:**31/12/2012 **Recommendation:** Keep
Summary: Intervention and Review	**RPC Opinion: Not Applicable**

1a. What were the policy objectives and the intended effects?

The primary purpose of the 2012 Regulations is to support the operation of EU Regulation (EC) 392/2009 (the "EU Regulation") which creates a liability and insurance regime for the carriage of passengers by sea as set out in the relevant provisions of the Athens Convention[1]. The 2012 Regulations establish the enforcement and penalty regime to be applied in cases of breaches or non-compliance with the EU Regulation, which took effect in UK law on 31 December 2012.

The 2012 Regulations apply to all international carriage by sea where the ship is registered in the UK, or the contract of carriage has been made in the UK, or the place of departure or destination is in the UK. In addition, they also apply to domestic voyages within the UK on board Class A and B ships[2], on or after the 31 December 2016 and 2018 respectively. All ships must have insurance, the minimum level of which is set out in the Athens Convention, and this must be evidenced by a certificate which may be issued in the UK by the Secretary of State (for a fee). Certificates must be carried on board the ship and produced on demand. Failure to comply with the insurance obligations or to produce the certificate are offences, and the ship may be detained as a consequence. Where the validity of detention is questioned the matter may be referred to arbitration and compensation may be awarded.

The 2012 Regulations also require that passengers are supplied with information relating to their rights under the EU Regulation which, in addition to including the relevant provisions as set out in the Athens Convention, also provides for compensation in the event or loss or damage to mobility equipment, and a one off payment of € 21,000 (approximately £19,000) to cover immediate economic needs to victims of an incident. Failure to do this constitutes an offence.

The intended effect was to ensure that ship-owners maintained adequate insurance cover, including provision for war risk, thereby enabling passengers to have prompt access to the higher levels of compensation (as set out in the Athens Convention), than would have otherwise been available to them in the event of an incident at sea.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The intended effects of the 2012 Regulations were expected to have been fully realised by the review date. Ship-owners were expected to have adequate insurance cover as soon as the 2012 Regulations came into force, whilst passengers were expected to be eligible for the higher compensation payments at the same time.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

This report includes a review of both the EU Regulation and its domestic enforcement and penalty regime (as implemented by the 2012 Regulations).

[1] The 1974 Athens Convention relating to the carriage of passengers and their luggage by sea as amended by the Protocol of 2002;
[2] Class A and B vessels, for the purposes of the Regulations these refer to the definitions set out in Council Directive 98/18/EC which relate to the sea area in which such vessels normally operate;

The level of evidence sought for this review is low, for a number of reasons outlined below. The assessment for the purposes of this report was intended to inform and, where appropriate, build on the evidence and analysis that was used in the original Impact Assessment[3].

The review takes account of how industry and businesses have adjusted to the 2012 Regulations since implementation and to identify and define any unintended costs or impacts resulting from it.

Applying the EU Regulation was not considered to be risky or contentious at the time of implementation – since the primary objective of the EU Regulation was to give passengers travelling by sea on EU-flagged ships, and from EU ports, a greater degree of financial protection through access to a higher level of financial compensation in the event of an incident. It also sought to expand on the Athens Convention by adopting a wider approach to passenger rights, particularly those with disabilities or reduced mobility, and to provide passengers with better publicised information about their rights in the event of an incident.

With the UK being a State Party to the original Athens Convention, it had previously introduced domestic legislation to supplement the international framework to ensure passengers travelling on domestic seagoing voyages received a level of protection comparable to passengers travelling internationally by sea. In that context, the costs on UK ship-owners in applying the slightly higher limits of liability introduced through the 2012 Regulations were assessed as being negligible, given that UK ship-owners were already required to observe higher limits under existing domestic rules.

Furthermore, the evidence we have collected suggests widespread compliance of the EU Regulations across the EU. And in the UK, there have not been any significant incidents since the 2012 Regulations came into force to enable a more detailed assessment of the real benefits of having higher limits.

As the legislation was, at the time, expected to have only a small impact on UK ship-owners, it was not deemed proportionate to undertake a higher level of evidence gathering, especially as the evidence sought was considered sufficient to answer the research question related to the review. There has been no indication from industry, either as part of this review or prior to this, that the impact of the 2012 Regulations have introduced either unmanageable costs or administrative burdens.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Evidence from stakeholders was collected via a combination of a formal consultation (which received one response) and regular informal engagement, particularly with key stakeholders such as the International Group of Protection and Indemnity (IGP&I[4]) clubs. The formal consultation was made up of a stakeholder questionnaire, targeted at key industry bodies representing shipowners, P&I clubs and legal firms. This was deemed preferable over a public consultation given the lack of wider interest in the 2012 Regulations and their relatively uncontroversial nature. As the formal consultation received only one response, the Department subsequently confirmed through its regular informal engagement with industry bodies that the 2012 Regulations were uncontroversial when first implemented and continue to be.

Compliance data was collected from the European-wide vessel inspection database. The Maritime and Coastguard Agency (MCA) has responsibility for ensuring the compliance of UK vessels and non-UK vessels calling at UK ports, whilst European maritime authorities have similar enforcement responsibilities for UK vessels calling at other European ports.

A light touch impact evaluation was used to identify any effects of the 2012 Regulations on the UK shipping industry arising from any maritime incident involving death or personal injury to passengers. In particular the stakeholder questionnaire sought to gather feedback on:

- How long did it take for business to understand the legislative changes? Was there a cost to business of doing so and, if so, what was it?
- Could these costs have been minimised had the 2012 Regulations been different?

[3] DfT00139 (02 December 2012).

[4] IGP&I – the International Group of Protection and Indemnity Insurers, made up of thirteen principle underwriters who provide insurance cover for about 90 percent of the world's ocean-going tonnage.

- What was the cost of purchasing additional insurance to meet the requirements of the 2012 Regulations?
- Were there any unintended impacts as a result of the introduction of the 2012 Regulations? (noting that these impacts could be either positive or negative)?
- Have the 2012 Regulations been beneficial to the UK shipping industry or have the effects been neutral or negative? (We invited industry stakeholders to provide further detail and any relevant evidence).
- Were there any other factors not covered by the above questions?

Given the lack of stakeholder feedback, the Department did not receive answers to all the questions above.

4a. To what extent has the regulation achieved its policy objectives?

When the 2012 Regulations came into force, the Department took advantage of the two derogations available in the EU Regulation to avoid gold-plating, which delay Class A and B ships coming into scope of the EU Regulation.

The derogations intended to strike the right balance between the need to protect passengers travelling on board Class A and B ships on domestic journeys in the event of an incident (by retaining domestic limits), and the need to minimise the potential immediate cost implications of compliance with the EU Regulation for small seagoing passenger ships.

In the three years since the legislation was introduced the MCA, which has responsibility for port state control inspections on ships entering UK ports, were not aware, even anecdotally, of any problems or difficulties with the requirement for ship-owners to have in place insurance to cover their liabilities under the higher limits established by the 2012 Regulations.

Between 2014 and 2015 the MCA performed 87 inspections of non-UK registered passenger ships, and also inspected all UK registered passenger ships. EU States also performed 46 inspections of UK registered passenger ships. All these inspected ships were found to have the required level of insurance in place. So no penalties were issued and no action was required against ship owners.

International ferry services are required to be inspected twice a year under the EU Ferries Directive. Under the Paris MoU UK registered vessels that never dock in the UK will still be subject to inspections when they dock at states that are signatories to this MoU.

Whilst the 2012 Regulations are in force and there is widespread compliance, it has been difficult to ascertain whether the 2012 Regulations have achieved their policy objectives given that they built on what was already in place in the UK. The EU Regulation was intended to meet a minimum standard of compliance and to give effect to the Athens Convention as amended by the 2002 Protocol. The UK already had in place domestic limits that were significantly higher than the original Athens Convention provided for and, therefore, provided passengers access to a greater level of protection. To that extent the 2012 Regulations strengthen the existing domestic regime by enabling passengers to access a higher level of financial compensation than had previously been available. At the time the UK applied permissible derogations to Class A and B ships, but did not extend the scope to Classes C and D, which was an option under the EU Regulation.

Despite an extensive engagement exercise with industry, through regular informal discussions and a formal consultation, particularly with the IGP&I Clubs, we have been unable to draw out any evidence to better understand the impact of the legislation.

Given diversification within the industry it has not been possible to secure a broad consensus or provision of data. The nature of maritime liability insurance is predicated on a number of different factors which, in turn, may affect the premiums that an individual ship-owner pays. Such matters can relate to the type of ship, the area in which it normally operates, the number of passengers a ship is authorised to carry, frequency of passenger claims and the resilience of the global insurance market.

Incidents involving passenger deaths or personal injury are usually resolved through the Courts (not by Government intervention) in order to restore victims of an incident to the financial position where they would have been had the incident not occurred – which might not have been realised if the previous lower limits still applied. In the UK there have not been any significant incidents since the 2012 Regulations

came into force to enable a more detailed assessment of the real benefits of having higher limits. Due to this the Government has been unable to confirm whether the policy concerns have been properly addressed.

As a result of the above, it has not been possible to inform existing assumptions developed in the original Impact Assessment with any new or additional evidence. The lack of data from industry since the introduction of the 2012 Regulations may be indicative of industry's general support for the provisions and that current arrangements have been seen as a welcome addition in strengthening the financial protection for passengers in the wider international maritime liability regime.

As the 2012 Regulations, at the time, were considered to bring about a relatively minor change and were considered to be uncontroversial, it is perhaps unsurprising that there has been little engagement on the issue, particularly given that the amounts already available in UK domestic law were already considerably higher than those that the Athens Convention had originally allowed for, and much closer to those of the 2002 Protocol and the subsequent EU Regulation.

There is no evidence from industry that the legislation creates an expensive imposition, nor is there any evidence to suggest that the 2012 Regulations are not working to the benefit of passengers involved in incidents.

4b. Have there been any unintended effects?

The Department and the MCA have not been made aware of any unintended consequences, either through the engagement exercise for this Post Implementation Review, or prior to that during regular engagement with industry trade associations.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA)

Due to the limitations of the available evidence base at the time of the original impact assessment (no evidence was provided by consultees at the time of the consultation process) it was not possible to monetise any of the costs that were identified. However, the preferred policy option at the time was based on keeping costs to operators of smaller seagoing passenger ships to a minimum, whilst ensuring that passengers were afforded the greatest protection when travelling on such ships for domestic journeys, as well as applying a minimalist approach to implementation by making use of available derogations.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

The questionnaire sought further evidence and information regarding costs and benefits to industry, but industry was unable to provide any data. Whilst efforts have been made to identify such businesses and understand better from them whether the 2012 Regulations have affected them, and in what way, these efforts have not been successful. Even with the first derogation coming to an end on 31 December 2016, which brings into scope Class A ships, there has been nothing from industry to express concerns. To this extent a more detailed assessment cannot be made on the actual impact of the 2012 Regulations on business.

Industry did not take the opportunity to provide any evidence, nor did it indicate that it wished to see the effects of the 2012 Regulations lessened or removed altogether. It is on that basis that there does not appear to be any need to consider reducing any burdens, since none have been identified by industry, even with regard to Class A and B ships.

Even though the need for such insurance is intended to provide greater protection to passengers involved in an incident at sea by giving them access to a higher level of financial recourse, stakeholders did not indicate that the 2012 Regulations should be removed or changed. The same can be said in respect of those elements that are in addition to the main provisions of the Athens Convention.

6. Assessment of risks and uncertainties in evidence base / Other issues to note

No risks or uncertainties have been identified in the evidence base and there are no other issues to note in respect of the implementation or application of the 2012 Regulations.

7. Lessons for future Impact Assessments

There has been no particular evidence gained from this exercise that would help inform future impact assessments.

8. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

All EU Member States have implemented the EU Regulation and some have implemented the provisions relating to Class A and B ships engaged on domestic journeys [either at the point of adoption or, like the UK, applied the time-bound derogations], although it is not clear what the individual motivations may have been for these different approaches. To that extent the UK's implementation is comparable with the way other EU Member States have implemented the EU Regulation, and the costs experienced by business are therefore not believed to have been radically different.

Between 29 July and 31 October 2016 the Commission launched an Open Public Consultation aimed at evaluating the EU Regulation since its entry into force, but which also included a number of forward-looking questions to determine whether an impact assessment for the future extension of the scope of the EU Regulation could be feasible (i.e. extending the scope to include Class C and D ships on domestic journeys).

The broad outcome of the Commission's consultation was that passengers seemed to be happy with the existing improvements to the increased protection that they could access in the event of an incident; ship-owners welcomed the harmonisation and level playing field, whilst national authorities valued both these factors as part of improved transport safety measures. There were some concerns about the level of awareness amongst passengers, and this will feed into the Commission's wider agenda on improving passenger rights when travelling by sea.

Generally, no incompatibilities were identified between the EU Regulation and the Athens Convention (as amended by the 2002 Protocol).

9. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

This review has been unable to come to a concrete conclusion, based on the limited evidence base, on whether the 2012 Regulations have met all their objectives. Whilst ship-owners do have adequate insurance cover, we cannot conclude that the compensation limits are appropriate.

The 2012 Regulations were intended to provide a greater level of protection to maritime passengers on international journeys in the event of death or personal injury at sea. The UK already had in place domestic provisions that were largely commensurate with the increased levels derived from the EU Regulation, albeit with a number of add-ons and derogations that the EU Regulation introduced. These, in many ways, have enhanced the value of the EU Regulation by providing additional support to victims in the event of an incident, and for those who lose or have damaged mobility equipment. It is, therefore, arguable, given that the UK has now ratified the Athens Convention, as amended by the 2002 Protocol, what the benefits of the 2012 Regulations are although passengers on domestic journeys using Class A vessels can also enjoy a higher level of protection (and which will apply to Class B vessels from 31 December 2018).

The 2012 Regulations are a sensible addition to the wider maritime insurance framework through strengthening the limits of liability to which passengers could have access to. It also provides an important number of additional elements that are aimed at people dependent on mobility equipment as well as providing financial support to cover immediate economic needs following an incident. As we have not found any evidence to suggest that the costs of the 2012 Regulations have been significant, it is unlikely that there would be much benefit from repealing the 2012 Regulations, which would also have the effect of putting the UK in breach of its EU obligations.

On 23 June 2017, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until EU Exit negotiations are concluded, the UK remains a full member of the European Union and all rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

However, the UK will still retain its membership of the IMO, and continue to meet its international obligations with regards to the Athens Convention, irrespective of the outcome of these negotiations.

Sign-off for Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed: Taro Hallworth **Date:** 09/02/2018