

<b>Title:</b> Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 <b>PIR No:</b> DFTPIR0055 <b>Original IA/RPC No:</b> DfT00139 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> Maritime & Coastguard Agency <b>Contact for enquiries:</b> Harry Hatter (Harry.Hatter@dft.gov.uk)	<b>Post Implementation Review</b>
	<b>Date:</b> April 2023
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 31/12/2012
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Not applicable	

### 1. What were the policy objectives of the measure?

This post implementation review (PIR) evaluates the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012.

The primary purpose of the regulations, as amended by The Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019, is to facilitate a liability and insurance regime as set out in the relevant provisions of the Athens Convention relating to the Carriage of Passenger and their Luggage by Sea 1974, as amended by the Protocol of 2002 ("the Athens Convention"). The regulations establish the enforcement and penalty regime to be applied in cases of breaches or non-compliance with the regulations.

The 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 (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 that 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 regulations also require that passengers are supplied with information relating to their rights under the regulations, which in addition to including the relevant provisions as set out in the Athens Convention also provide for compensation in the event of loss or damage to mobility equipment, and a one-off payment (now £18,500) to cover immediate economic needs to victims of an incident. Failure to do this constitutes an offence.

The intended effect was to ensure that shipowners 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. We believe that the UK's membership of the Athens Convention is seen as important and uncontroversial by industry.

## 2. What evidence has informed the PIR?

The evidence for this PIR was very limited, based on a low number of responses from stakeholders and changes to data collection and access since leaving the EU. However, the measure is not controversial, and no issues were identified as part of the five-year PIR in 2017.

Evidence was collected from stakeholders in Spring 2022 via an informal consultation, shared with key stakeholders from various industry organisations.

The questionnaire included the following questions:

### **For shipowners:**

- What was the cost of purchasing additional insurance to meet the requirements of the regulations?
- Have you noticed any unintended impacts as a result of the introduction of the regulations? (These impacts could be either positive or negative)
- Do you believe that the retention of this legislation since 2017 has been beneficial to the UK shipping industry, or do you believe its effects have been neutral or negative? If so, we would welcome further detail and any evidence you can provide.
- Are there any other factors not covered by the above questions? If so, please explain below.

### **For maritime insurers:**

- Has there been a change in insurance premiums for passenger ship owners to meet their obligations under the regulations since 2017?
- Are you aware of an increase in passenger ship owners seeking such insurance since 2017?
- Do you have any evidence to quantify or qualify any such changes to premiums? Please describe.
- Do you believe that the retention of this legislation since 2017 has been beneficial to the UK shipping industry, or do you believe its effects have been neutral or negative?
- Have you seen a change in the number of maritime incidents involving passenger vessels since the last review of the regulations in 2017?
- Are there any other factors you would like us to consider which have not been covered by the above questions? If so, please explain below.

The surveys were sent to 16 stakeholders, representing a sample of the different interests involved. The types of stakeholders invited to respond to the consultation are listed in the table below.

Type of stakeholder	Number of stakeholders invited to respond to the consultation
Industry body	4
Insurance	7
Port	1
Legal	2
Government	1
Union	1

The response rate was low, with just three responses (response rate 18.75%). The respondents were from varied stakeholder groups, representing industry, trade union and legal groups. The low response rate meant that the evidence provided is limited, however none of these responses flagged any issues with the regulations themselves, with an operator stating that no impact had been observed on the cost of insuring their vessels. Most respondents did not answer all the questions, and no insurers responded to the consultation.

Informal engagement indicated that industry did not have any concerns with the current regulations.

The five-year PIR stated that no penalties had been brought against vessel operators for non-compliance in the years 2015-2016. However, following the UK's exit from the EU, the recording of this type of data has moved from the European Maritime Safety Agency (EMSA) database THETIS to a new system owned by the MCA (called Pelorus). Pelorus does not yet have full functionality. The Maritime and Coastguard Agency therefore cannot provide any meaningful data on penalties since 2016.

### 3. To what extent have the policy objectives been achieved?

The five-year PIR indicated that the policy had been achieved, with no stakeholders indicating the regulations should be removed or changed.

For this PIR, no stakeholders reported any concerns during the consultation period with the regulations. One stakeholder expressed concerns, not with the way we have implemented our legislation, but on the actual limits of liability and how they are calculated in the underlying international conventions, which are not part of the review process. Responses were limited, but an operator stated that they believed that the regulations were neutral to the industry.

Compliance is thought to be very high. 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 of these inspected ships were found to have the required level of insurance in place and no penalties were issued nor was any action required against shipowners. Changes in data collection using the new Pelorus system (which is not yet fully functioning) means the updated data on penalties is currently not available.

Passengers are made aware of their rights at the time they book a ticket, as this forms part of the terms & conditions of travel. It is also publicised in ports as part of the separate passenger rights requirements for delayed and cancelled services.

The legislation was implemented in 2012. Future impacts are not anticipated.

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 measure.***

Signed: Vere J Nowbiter

Date: 3 May 2023

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### **4. What were the original assumptions?**

No costs or benefits were identified at implementation during the five-year PIR or during stakeholder engagement. 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 informal 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.

The operator who responded to the survey stated that the legislation had been costless to their business, as they already maintained more than the minimum requirement for insurance. They also stated that they felt the measure was neutral to the sector.

No lessons learnt were identified. No lessons were identified in the five-year PIR.

### **5. Were there any unintended consequences?**

No unintended consequences have been identified in the five-year PIR, and none have been identified in any stakeholder engagement undertaken for this PIR.

### **6. Has the evidence identified any opportunities for reducing the burden on business?**

The current regulations appear to be working as intended. No evidence that identified opportunities to reduce the burden for business was submitted in the informal consultation process, nor was any evidence identified for the five-year PIR.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

All EU Member States have implemented the Athens Convention, 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, have applied the time-bound derogations), although it is not clear what the individual motivations may have been for these different approaches. To the extent that the UK's implementation is comparable with the way other EU Member States have implemented the Athens Convention, the costs experienced by business are therefore not believed to have been radically different. Due to the issues in accessing all data fields in EMSA's database THETIS, we are not able to access the full international data, including the data relating to insurance.