

Title: Domestic legislation implementing EU Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accidents IA No: DfT00139 Lead department or agency: Department for Transport Other departments or agencies: Maritime and Coastguard Agency	Impact Assessment (IA)		
	Date: 09/07/2012		
	Stage: Consultation		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
Contact for enquiries: andrew.angel@df.t.gsi.gov.uk 0207 944 5452			

Summary: Intervention and Options **RPC: AMBER**

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, One-Out?	Measure qualifies as
£0.4	£0.4	£-0.05	No	N/A

What is the problem under consideration? Why is government intervention necessary?
 There is a need to ensure that the framework for providing compensation to passengers carried by sea in the event of death or personal injury is effective and provides prompt, adequate compensation. The UK is a signatory to the Athens Convention and has up until now, relied upon its domestic legislation to supplement the international framework and ensure passengers are well protected. The 2002 Protocol to the Athens Convention strengthens the key provisions of the international regime beyond the provisions that exist in UK legislation. EU Regulation 392/2009 introduces the Athens regime into EU law and applies it from 31 December 2012. Government intervention is needed to implement the EU Regulation in the UK.

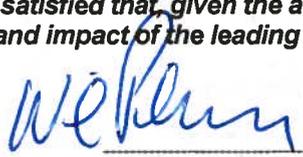
What are the policy objectives and the intended effects?
 The policy objective is to implement the EU Regulation in the UK in order to enhance the protection that is available to passengers travelling on voyages that the EU Regulation is applied to, whilst only applying the EU Regulation to additional voyages beyond its minimum scope when the benefits justify the costs. The EU Regulation introduces higher liability limits on carriers; requires carriers to have compulsory insurance; and provides claimants with the right of direct action against insurers. The intended effect is to provide an enhanced framework of compensation in the event of the death or personal injury of a passenger, or the loss of or damage to luggage.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 The EU Regulation applies directly to international seagoing voyages and passenger ships of EU Classes A and B on domestic seagoing voyages. This is the minimum scope of the EU Regulation. In order to implement the EU Regulation in the UK, the following options are being considered with regards to the application to domestic seagoing voyages: a) Do Nothing; b) Option 1: Apply the EU Regulation to all passenger ships on domestic seagoing voyages; c) Option 2: Apply the EU Regulation to passenger ships of EU Classes A, B, C and D on domestic seagoing voyages; and d) Option 3: Apply the EU Regulation to passenger ships of EU Classes A and B only. Option 3 is the preferred option because it satisfies the policy objectives and is in keeping with better regulation principles because it adopts a minimalist approach to implementation by making use of available derogations. Under this option, all other passenger ships on domestic seagoing voyages would continue to apply the existing regime at no additional costs to them.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2018

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.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce new legislation to implement the EU Regulation in the UK and apply the EU Regulation to all passenger ships on domestic seagoing voyages.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: 0.25

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	NA	NA
High	NA		NA	NA
Best Estimate	NA		0.02	0.16

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

1.) Additional costs of war/terrorism cover to shipowners of passenger ships operating domestic seagoing voyages are estimated at around £36,000 per year from 2018. 2.) Additional costs of state certificates to shipowners of passenger ships operating domestic seagoing voyages are estimated at around £6,300 per year from 2018. NB: the average annual cost shown above is the average annual cost over the 10 year appraisal period, rather than over the period during which the costs would be incurred.

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

1.) Potential increases in insurance costs for shipowners due to the impact on premiums or contributions of the requirements of strict liability; increased limits of liability for death, personal injury, loss and damage to luggage and vehicles; compensation for mobility equipment; advance payments; and increases to time bar provisions. 2.) There could also potentially be familiarisation and administrative costs. 3.) As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential benefits associated with the Regulation would effectively be forgone.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA	NA
High	NA		NA	NA
Best Estimate	NA		0.04	0.41

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

As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential costs associated with the Regulation would be avoided. The benefits of avoiding the costs associated with war/terrorism insurance cover and applying for state certificates to these ships are estimated at £80,961 per year between 31 December 2012 and 30 December 2016; and £60,837 per year between 31 December 2016 and 30 December 2018.

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

1.) Due to the increased scope, the main benefits of Option 1 are the increased protection and compensation that would be available to passengers and their dependants in the event of an incident including death, injury and loss or damage to luggage, vehicles and mobility equipment. 2.) Claimants would benefit from the right of direct action over insurers and strict liability would render the burden of proof with carriers and not claimants. 3.) There would be simplification benefits.

Key assumptions/sensitivities/risks	Discount rate (%)	3.50
--	--------------------------	------

1.) The estimates are sensitive to the assumptions, data sources and underpinning estimates. 2.) As the EU Regulation is directly applicable in the UK, the baseline against which the additional costs and benefits of this option have been assessed is the minimum scope of the EU Regulation assuming derogations are not taken up (the 'do nothing' option). 3.) The costs to passenger ships of EU Classes A and B of complying with the EU Regulation are not included in the above estimates as they are incurred in this baseline.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.02	Benefits: 0.0	Net: 0.02	Yes	IN

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce new legislation to implement the EU Regulation in the UK and apply the EU Regulation to passenger ships of EU Classes A, B, C and D on domestic seagoing voyages.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: 0.3

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	NA	NA
High	NA		NA	
Best Estimate	NA		0.01	0.1

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

1.) Additional costs of war/terrorism cover to shipowners of EU Class C and D vessels only are estimated at around £16,000 per year from 2018. 2.) Additional costs of state certificates to shipowners of EU Class C and D vessels only are estimated at around £1,000 per year from 2018. NB: the average annual cost shown above is the average annual cost over the 10 year appraisal period, rather than over the period during which the costs would be incurred.

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

1.) Potential increases in insurance costs for shipowners due to the impact on premiums or contributions of the requirements of strict liability; increased limits of liability for death, personal injury, loss and damage to luggage and vehicles; compensation for mobility equipment; advance payments; and increases to time bar provisions. 2.) There could also potentially be familiarisation and administrative costs. 3.) As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential benefits associated with the Regulation would effectively be forgone.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA	NA
High	NA		NA	
Best Estimate	NA		0.04	0.4

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

As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential costs associated with the Regulation would be avoided. The benefits of avoiding the costs associated with war/terrorism insurance cover and applying for state certificates to these ships are estimated at £80,961 per year between 31 December 2012 and 30 December 2016; and £60,837 per year between 31 December 2016 and 30 December 2018.

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

1.) Due to the increased scope, the main benefits of Option 2 are the increased protection and compensation that would be available to passengers and their dependants in the event of an incident including death, injury and loss or damage to luggage, vehicles and mobility equipment. 2.) Claimants would benefit from the right of direct action over insurers and strict liability would render the burden of proof with carriers and not claimants. 3.) These benefits would be less than under Option 1.

Key assumptions/sensitivities/risks

Discount rate (%) 3.50

1.) The estimates are sensitive to the assumptions, data sources and underpinning estimates. 2.) As the EU Regulation is directly applicable in the UK, the baseline against which the additional costs and benefits of this option have been assessed is the minimum scope of the EU Regulation assuming all derogations are not taken up (the 'do nothing' option). 3) The costs to passenger ships of EU Classes A and B of complying with the EU Regulation are not included in the above estimates as they are incurred in this baseline.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.01	Benefits: 0.0	Net: 0.01	Yes	IN

Summary: Analysis & Evidence

Policy Option 3

Description: Introduce the new legislation to implement the EU Regulation in the UK and apply the EU Regulation to passenger ships of EU Classes A and B on domestic seagoing voyages only.

FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: 0.4
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised costs by 'main affected groups'					
No additional costs specific to the Regulation have been identified under Option 3.					
Other key non-monetised costs by 'main affected groups'					
As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential benefits associated with the Regulation would effectively be forgone. Since it has not been possible to monetise the benefits associated with the Regulation, it has not been possible to monetise this particular cost either.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NA		NA	NA	
High	NA		NA	NA	
Best Estimate	NA		0.04	0.4	
Description and scale of key monetised benefits by 'main affected groups'					
As a consequence of derogating obligations in respect of ships of EU Class A and B, a degree of the potential costs associated with the Regulation would be avoided. The benefits of avoiding the costs associated with war/terrorism insurance cover and applying for state certificates to these ships are estimated at £80,961 per year between 31 December 2012 and 30 December 2016; and £60,837 per year between 31 December 2016 and 30 December 2018.					
Other key non-monetised benefits by 'main affected groups'					
NA					
Key assumptions/sensitivities/risks				Discount rate (%)	NA
1.) As the EU Regulation is directly applicable in the UK, the baseline against which the additional costs and benefits of this option have been assessed is the minimum scope of the EU Regulation assuming all derogations are not taken up (the 'do nothing' option). 2.) Relative to this baseline, it is considered that there would be no additional costs and benefits under Option 3, other than those associated specifically with derogating obligations in respect of ships of EU Class A and B, as the EU Regulation applies directly to passenger ships of EU Classes A and B on domestic seagoing voyages.					

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 0.05	Net: -0.05	No	N/A

Evidence Base

Title of proposal: Domestic legislation implementing EU Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accidents.

Definitions: In this impact assessment reference to-

- *The Athens Convention* means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- *The 2002 Protocol* means the Protocol of 2002 to the Athens Convention;
- *The EU Regulation* means the EU Regulation No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents;
- In the UK, a *unit of account* means a Special Drawing Right (SDR). A SDR is an international reserve asset created by the International Monetary Fund in 1969 to supplement its member countries' official reserves. As at 22 June 2012, 1 SDR was worth around £0.97 (\$1.5)¹
- The *carrier* means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier.

SECTION 1 – BACKGROUND

1.1. The Athens Convention, 1974

The UK is a State Party to the Athens Convention. The Athens Convention establishes a regime of liability for damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage carried by sea on any international carriage. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. However, unless the carrier acts with intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the carrier can limit its liability at 46,666 SDR per passenger, per carriage. The Athens Convention was incorporated into UK law by Section 14 and Schedule 3 of the Merchant Shipping Act 1979 and the Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980 made temporary provision for the Athens Convention to apply to certain contracts of international and domestic carriage pending its entry into force.

1.2. The Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987

The Athens Convention entered into force internationally on 30th April 1987. On the same day the Athens Convention was given the full force of law in the UK, the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 took effect. This Order extended the requirements of the Athens Convention to the carriage of fare-paying passengers on domestic seagoing voyages within the UK, the Channel Islands and the Isle of Man where there is no intermediate port of call outside that area.

1.3. The Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998

In addition, the UK via the Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998 established an enhanced national liability limit of up to 300,000 SDR per passenger per carriage but this only applies to carriers whose principal place of business is in the UK. The UK had already increased the limits of liability (for loss of life and personal injury) after the *Herald of Free Enterprise* disaster in 1987 from 46,666 to the equivalent of 100,000 SDR.

1.4. The 2002 Protocol to the Athens Convention

In 2002, the International Maritime Organisation (IMO) adopted a Protocol to the Athens Convention, which will amend the Athens Convention, when in force, by:

- Introducing higher liability limits on carriers (from 46,666 to 400,000 SDR per passenger per carriage);
- Requiring the carrier to provide evidence of insurance up to 250,000 SDR per passenger on the basis of strict liability;

¹ http://www.imf.org/external/np/fin/data/param_rms_mth.aspx

- Requiring the compulsory insurance cover required by the Protocol to be verified by a certificate issued by a State Party (i.e. the Secretary of State for Transport);
- Introducing the right of direct action against the insurer up to 250,000 SDR; and
- Changing the time bar provisions i.e. the amount of time that is allowed to pass after an incident before any action for damages has to be brought before a court of law.

To date only 6 States (Albania, Belize, Latvia, Serbia St. Kitts and Nevis and Syrian Arab Republic) have become Party to the 2002 Protocol. The 2002 Protocol enters into force twelve months following the date on which a total of 10 States have become Party to it.

1.5. EU Regulation 392/2009 on the liability of carriers of passengers by sea

To expedite ratification of the 2002 Protocol by the EU and its Member States, the EU Regulation was adopted. The EU Regulation introduces the 2002 Protocol into EU law and extends the requirements of the 2002 Protocol to the carriage by sea of passengers within a single Member State on board ships of Class A and B² and if a Member State so decides, to all domestic sea-going passenger voyages. Member States may choose to defer application of the EU Regulation to Class A passenger ships until 31 December 2016 and Class B passenger ships until 31 December 2018.

Article 2(3) of the EU Regulation also states that no later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order to extend the scope of the EU Regulation to ships of Class C and D.

The EU Regulation also introduces two further measures intended to enhance the protection afforded to passengers over and above that provided by the 2002 Protocol. The EU Regulation introduces a provision requiring an advance payment of up to €21,000 to cover the immediate economic needs of a passenger in the event of an accident and introduces a provision requiring the payment of full compensation to cover the replacement of mobility equipment where it has been lost or damaged by a carrier.

1.6. Summary of the key components of the Athens regime

Table 1: Key components of the Athens regime on a per passenger basis

	'74 Athens Convention	'87 Domestic Carriage Order	'98 United Kingdom Carriers Order	'02 Protocol to the Athens Convention	EU Regulation 392/2009
Limit of Liability – death and injury	46,666 SDR	46,666 SDR	300,000 SDR	400,000 SDR	400,000 SDR
Limit of Liability – death and injury (war and terrorism)	As above	As above	As above	250,000 SDR up to an overall limit of 340 million SDR	250,000 SDR up to an overall limit of 340 million SDR
Limit of Liability – cabin luggage	833 SDR	833 SDR	833 SDR	2,250 SDR	2,250 SDR
Limit of Liability – vehicles	3,333 SDR	3,333 SDR	3,333 SDR	12,700 SDR	12,700 SDR
Limit of Liability – other luggage	1,200 SDR	1,200 SDR	1,200 SDR	3,375 SDR	3,375 SDR
Deductible - Vehicles	117 SDR	117 SDR	117 SDR	330 SDR	330 SDR
Deductible - Luggage	13 SDR	13 SDR	13 SDR	149 SDR	149 SDR
Basis of Liability	Fault	Fault	Fault	Strict	Strict
Compulsory insurance	No	No	No	Yes	Yes
State Certification	No	No	No	Yes	Yes
Right of direct action	No	No	No	Yes	Yes
Length of time bar	3 years	3 years	3 years	5 years	5 years
Scope	International	UK, Channel Islands and the Isle of Man	UK, Channel Islands and the Isle of Man	International	EU including domestic seagoing services
Advance Payments	No	No	No	No	Yes
Specific compensation for mobility equipment	No – luggage limits apply	No – luggage limits apply	No – luggage limits apply	No – luggage limits apply	Yes

² Merchant Shipping Notice (MSN) 1747 - The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, sets out the sea areas around the United Kingdom as is required by Article 4.2 of Council Directive 98/18/EC of 17 March 1998 on Safety Rules and Standards for Passenger Ships. These Regulations identify four domestic passenger ship classifications.

1.7 The relationship between the Convention on Limitation of Liability for Maritime Claims (LLMC) and the Athens Convention

The UK is also a State Party to the International Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 as amended by the 1996 Protocol. The LLMC Convention enables a shipowner to limit its liability. In respect of claims arising from loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner is 175,000 SDRs multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

The LLMC, as amended by the 1996 Protocol forms part of UK law through section 185 and Schedule 7 of the Merchant Shipping Act 1995 ("the Act"). The Act was amended to take account of the changes to the LLMC by the 1996 Protocol through the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998) SI 1998 No 1258. These changes became effective on 13 May 2004.

Article 19 of the Athens Convention, which forms part of UK law through section 183 of the Act, states the Athens Convention "shall not modify the rights or duties of the carrier, the performing carrier and their servants or agents provided for in international conventions relating to the liability of owners of seagoing ships". Article 5 of the EU Regulation also provides that the EU Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the LLMC as amended by the 1996 Protocol and future amendments to the Protocol.

To conclude, a shipowner would, under existing UK law, be entitled to invoke the global limitation in the LLMC in respect of a claim to which the Athens Convention applied and could limit its liability for claims of loss of life or personal injury to passengers of a ship provided the limit of liability is not lower than 175,000 SDR multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate. This limit will however be reviewed as part of the consultation process.

2. PROBLEM UNDER CONSIDERATION

The problem under consideration is the need to ensure that the framework for providing compensation in the event of the death or personal injury of a fare paying passenger carried by sea continues to operate effectively and claims for compensation are met adequately and paid promptly. Whilst the UK is a signatory to the Athens Convention, it has introduced domestic legislation to supplement the international framework to ensure passengers travelling on domestic seagoing voyages receive a level of protection comparable to passengers travelling internationally by sea.

The EU Regulation was adopted to ensure that there is a uniform liability regime for passenger carriers at EU level. At present the beneficiaries of those who die, injured persons and passengers whose luggage has been lost or damaged in the EU are compensated in accordance with the national law. The liability regimes of carriers of passengers by sea differ from one Member State to another depending on whether or not they are a State party to the 1974 Convention and/or LLMC. This means that compensation is not offered in a comparable manner throughout the EU.

The 2002 Protocol modernises and significantly strengthens the international (worldwide) framework for providing compensation in the event of the death or personal injury of a fare paying passenger carried by sea. However, the 2002 Protocol applies to international seagoing voyages only. The EU Regulation, as well as applying to all journeys between EU Member States, extends the scope of the 2002 Protocol to certain categories of domestic seagoing voyages.

It should be noted that limitation of liability only exists in the aviation and shipping sectors. For comparison, the Montreal Convention sets out airlines' liabilities for passengers and their baggage. It applies to international travel only. It does, however, cover any journey within the EU (including domestic journeys within a single Member State), because its provisions have been replicated in EU legislation. Under the Montreal Convention, air carriers are strictly liable for damages up to 113,100 SDR including damages that originate from acts of terrorism and war. The Montreal Convention sets the maximum liability of airlines for lost baggage to a fixed amount of 1,131 SDR.

In addition, EC Regulation 785/2004, which came into force on 30 April 2005, establishes a mandatory requirement for third party insurance which airlines have to carry (including third country airlines) if they are to trade anywhere in the EU airspace. All aircraft, except state aircraft, are covered. It thus applies to private fliers as well as commercial operators. Owners of planes, including historic planes, have to carry third party cover commensurate with the weight of their aircraft. EC Regulation 785/2004 makes no exception for war and terrorism risks and therefore obliges carriers to carry insurance for damage

caused by planes as a result of an act of terrorism or war. For example, the third party damage to the town of Lockerbie following the incident in 1988 would have been covered by premiums paid to satisfy EC Regulation 785/2004.

3. RATIONALE FOR INTERVENTION

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.

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.

The EU Regulation incorporates the 2002 Protocol into EU law and extends the coverage of the 2002 Protocol to include 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.

Government intervention in the form of new legislation is needed to successfully implement the EU Regulation in the UK, including setting out the penalties and procedures in the event of non-compliance and establishing in law exactly which domestic services will be required to operate in accordance with the 2002 Protocol as introduced into EU law by the EU Regulation.

3.1. Description of the Regulation (specific policy options outlined in later sections)

3.1.1 Domestic seagoing voyages

The EU Regulation extends the scope of the 2002 Protocol to Class A and B ships on domestic seagoing voyages and indicates that Member States may apply the EU Regulation to all domestic seagoing voyages. The EU Regulation allows a Member State to defer the application of the Regulation to ships of Class A and B until 31st December 2016 and 31st December 2018 respectively.

The EU Regulation also formally reserves the Commission's right to extend the application of the 2002 Protocol to ships of Class C and D by July 2013.

As explained previously, the UK already applies domestic legislation in this area. The *Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987* ('The 1987 Order') applies in the UK and extends the provisions of the Athens Convention to any contract under which the places of departure and destination are in the area consisting of the United Kingdom, the Channel Islands and the Isle of Man and under which there is no immediate port of call outside that area.

The 1987 Order has the effect of applying the Athens Convention to all domestic seagoing voyages. Applying the EU Regulation in the same way (i.e. to all domestic seagoing voyages) is considered as policy Option 1. Applying the EU Regulation to passenger ships of EU Class A, B, C and D only on domestic seagoing voyages is considered in policy Option 2. Applying the EU Regulation to ships of Class A and B only on domestic seagoing voyages is considered in policy Option 3.

Option 2 and 3 would create a two-tiered approach for passengers travelling on domestic seagoing passenger services in the UK. It is proposed to defer the application of EU Regulation to Class A ships until 31 December 2016 and Class B ships until 31 December 2018. Passengers travelling on such services would continue to be covered by the conditions (including the national liability limit of up to 300,000 SDR per passenger per carriage) established by the Athens Convention rather than the 2002 Protocol until the EU Regulation applied. Passenger ships on domestic seagoing voyages that fall outside the scope of the EU Regulation completely would also continue to be covered by the conditions established by the Athens Convention.

3.1.2. *The establishment of a national limit of liability*

Whilst the 2002 Protocol specifies that carriers can limit their liability for death or personal injury claims at 400,000 SDR per passenger per carriage, the 2002 Protocol does allow Contracting States, if they so wish, to establish higher limits of liability than prescribed in the 2002 Protocol. It would therefore be possible for the UK to introduce a higher national limit of liability. However, there is no evidence currently available to show that higher limits of liability are necessary (i.e. there have been no reported incidents where claims for death and personal injury, involving UK citizens, have exceeded the 400,000 SDR limit of liability). No other State has indicated any intention to implement a higher limit of liability than prescribed in the 2002 Protocol, therefore carriers subject to UK legislation would have a higher limit of liability than other carriers. Given the lack of evidence available to show that a unilateral increase in limits is necessary this has been ruled out as a policy option. ***Consultees are invited to submit any additional evidence on the need for compensation exceeding 400,000 SDR to be provided for death or personal injury claims in relation to passengers travelling by sea, and whether imposing a higher national limit of liability would impact on competition.***

3.1.3. *Administration of the requirement to carry compulsory insurance*

The 2002 Protocol states that a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship by the appropriate authority of a State Party. In the UK, the role of the appropriate authority is to be undertaken by the Maritime and Coastguard Agency (MCA). The MCA would issue certificates to UK registered ships and may issue certificates to non-UK registered ships. The MCA are likely to receive a number of requests for certification from cruise ships registered outside the EU seeking entry to a UK port.

Shipowners will need to ensure the certificates are available for examination at all times by the relevant Port State Officers. Failure to provide the relevant paperwork would mean that the ship is liable to be detained and a shipowner would be deemed to have committed an offence if they were unable to provide evidence of insurance being maintained.

3.1.4. *Penalties and offences*

The need to have compulsory insurance for the liability of carriers of passengers by sea in the event of accidents is a key element of the 2002 Protocol. Whilst this requirement needs to be backed up by robust and effective provisions in national legislation that incentivise compliance, the EU Regulation leaves the compliance regime to be developed to the individual Member State. The proposed penalties and enforcement associated with the 2002 Protocol will mirror the well established, comprehensive and coherent structure of maritime regulatory enforcement which already operates in the UK and is well understood within the maritime community. In order to fulfil the obligations of the 2002 Protocol and the EU Regulation, the Government proposes the following measures:

Failure to provide notice:

Any carrier who fails to give the passenger notice of certain provisions of the 2002 Protocol shall be guilty of an offence and liable on summary convictions to a fine of an amount not exceeding level 4 on the standard scale.

Failure to insure:

The master and operator of a ship shall be each guilty of an offence if a ship licensed to carry more than twelve passengers enters or leaves, or attempts to enter or leave, a port in the United Kingdom, or if the ship is a United Kingdom ship, a port in any other country without a certificate attesting that insurance or other financial security is in force in accordance with the relevant provisions of the 2002 Protocol. A person guilty of the offence shall be liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.

Production of certificates:

If a ship fails to carry, or the master of a ship fails to produce a certificate, the master shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale³.

³ The standard scale is a system whereby financial criminal penalties (fines) in legislation have maximum levels set against a standard scale. The maximum fine under level 5 of the standard scale is £5,000.

Detention of ships:

A ship may be detained if anyone attempts to navigate it out of a port without a certificate attesting that insurance or other financial security is in force in accordance with the relevant provisions of the 2002 Protocol. It is worth noting that if a ship attempts to leave a port before that detention has been lifted then, under section 284 of the Merchant Shipping Act 1995, the master of the ship will be liable on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment to a fine.

Cancellation of certificates:

The Secretary of State may make regulations about the cancellation and delivery up of compulsory insurance certificates issued by UK authorities. A person who fails to deliver up a certificate in accordance with the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

4. BACKGROUND DATA

This section sets out the data it has been possible to obtain to inform our assessment of the scale of the problem and the different policy options. However, there remain gaps in evidence which consultees are invited to help address (flagged at various points throughout this impact assessment).

4.1. Passenger Numbers

Table 2: UK sea passenger movements: 1996-2010 (in thousands)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
A	34,543	36,258	33,226	31,381	28,517	27,753	28,726	26,523	25,799	23,693	23,465	23,668	22,840	21,626	21,883
B	24	29	23	26	26	27	32	25	40	52	58	68	72	55	55
C	226	445	461	469	540	702	767	935	1,013	1,064	1,341	1,347	1,557
D	34,793	36,287	33,249	31,852	29,003	28,249	29,298	27,250	26,605	24,680	24,537	24,800	24,254	23,028	23,495
E	3,781	4,238	4,103	4,397	4,275	4,095	4,314	4,436	4,318	3,904	3,798	3,971	3,679	3,737	3,784
F	15,871	16,214	16,038	16,665	16,662	17,120	17,658	18,398	18,438	18,622	19,302	19,213	18,266	18,627	19,402

Source: DfT Sea Passenger Statistics
<http://www.dft.gov.uk/statistics/series/sea-passengers/>

A - Ro-Ro ferry passengers on international short sea routes

B - Passengers on international long sea journeys Including long sea and cruise passengers for most years between 1957 and 1982

C - Passengers on cruises beginning or ending at UK ports Cruise passengers, like other passengers, are included at both departure and arrival if their journey begins and ends at a UK seaport

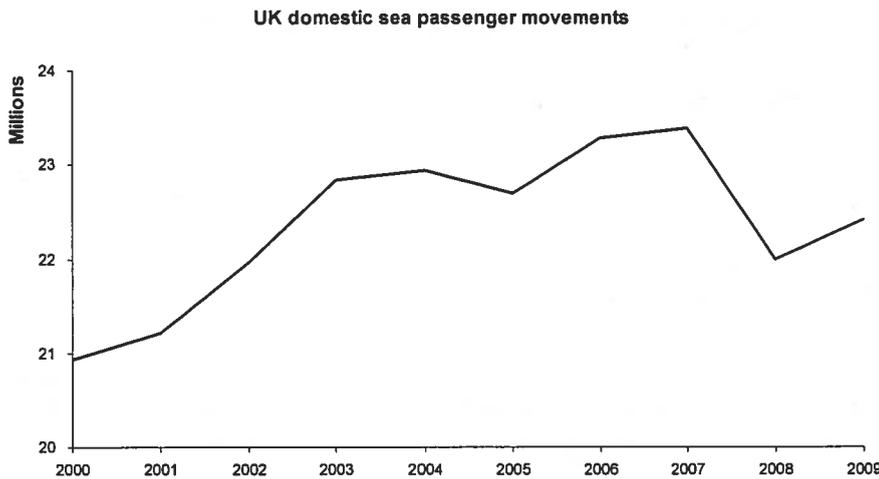
D - All international passengers Excluding cruise passengers in 1997/1998.

E - Domestic sea crossings calling at GB ports Includes services between Great Britain and Northern Ireland, Orkney, Shetland, Isle of Man, Channel Islands and the major pleasure cruise operators. Note that services not involving GB are not included - e.g. Northern Ireland to Isle of Man.

F - Domestic Inter-island services Includes Isle of Wight services and Scottish inter-island services.

It should be noted that the passenger numbers shown in Table 2 and Figure 1 cover passenger movements on both seagoing and non-seagoing voyages, although it should be noted that only seagoing voyages would be affected by the legislation that would be introduced under the policy options assessed in this impact assessment.

Figure 1: UK domestic sea passengers (2000-2009) (Excluding river ferries)



Source: DfT Sea Passenger Statistics

4.2. UK Registered Seagoing Passenger Ships

Ships servicing domestic passenger routes will tend to be either scheduled ferry services or small ships offering excursion and sightseeing tours. Table 3 below provides a summary of seagoing passenger ships on the UK register. The ships are categorised depending on whether their certificate indicates that they can service international passenger routes or they can only service domestic passenger routes. There are two separate classification systems for ships that can only service domestic passenger routes; these ships may have either a EU Class A to D certificate or a UK Class II(A), III, VI or VI(A) certificate⁴. Ships with both EU and UK certificates are listed in the EU Class category only. It should be noted that ships with a UK certificate that indicates that they can service international passenger routes may service domestic passenger routes. One such example is in relation to ships with a UK Class II certificate; whilst such ships are certified to undertake short international voyages, they also operate on routes between Great Britain and Northern Ireland. It is also common for a domestic passenger ship that is certified to go to sea to operate in categorised waters.

It is also possible that some foreign registered ships (which are not reflected in any of the tables below) may service domestic seagoing routes, although the Maritime and Coastguard Agency (MCA) have advised that in most cases ships servicing domestic seagoing routes are likely to be UK registered.

Table 3: UK registered seagoing passenger ships as of 1 September 2011

Ships that can service international passenger routes	46
Ships that can only service domestic passenger routes (EU Class A to D)	63
Ships that can only service domestic passenger routes (UK Class II(A), III, VI or VI(A))	166
Total:	275 ships

Source: Maritime and Coastguard Agency

Table 4 lists those ships that have an EU Class A, B, C or D certificate. These ships are classed in accordance with Merchant Shipping Notice (MSN) 1747 which augments S.I. 2000 No.2687 *the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000*, which in turn implements Council Directive 98/18/EC on Safety Rules and Standards for Domestic Passenger Ships. These Regulations identify four domestic passenger ship classifications as follows: EU Classes A, B, C and D. The MSN also sets out the geographical extent of sea areas C and D identified as applicable in waters around the United Kingdom.

⁴ The Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998 arranges ships into Classes III to VI(A) as defined.

Table 4: Number of UK registered ships with an EU Class A, B, C or D certificate as of 1 September 2011

EU Class	Number of ships
A	4
B	27
C	31
D	1
Total:	63

Source: Maritime and Coastguard Agency

Whilst the majority of ships of EU Class A to D are capable of going to sea, there are a number of Class C and D ships operating in categorised waters (i.e. waters not regarded as sea). Operators may obtain certification over and above that required in order to give themselves operational flexibility.

The EU Regulation distinguishes between ships of EU Class A, B, C and D, and other domestic seagoing voyages.

Table 5 lists those ships that do not have an EU Class A, B, C or D certificate, and only have a UK Class II(A), III, VI or VI(A) certificate. These ships are classed in accordance with MSN 1699 which augments S.I. 1998 No. 2515 *the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998*. These Regulations arrange passenger ships into five construction Classes of which three are construction Classes capable of going to sea. Ships of Class II(A) are ships engaged on voyages of any kind other than international voyages, which are not ships of Classes III to VI(A). It is important to note that Table 5 only lists those ships which do not have an EU Class certificate. All of the ships in Table 4 will have both an EU and a UK Class certificate.

Table 5: Approximate number of UK registered ships with a UK Class II(A), III, VI or VI(A) certificate

UK Class	Number of Ships
II(A)	3
III	0
VI	149
VI(A)	14
Total:	166

Source: Maritime and Coastguard Agency

Table 5 indicates that there are a number of small passenger ships that are not EU certified but are certified as either UK Class II(A), III, VI and VI(A) under the UK classification regime.

It is not appropriate to consider a ship to be seagoing simply on the basis of its Class. A ship is only considered to be seagoing if it is undertaking a voyage at sea.

4.3. Categorisation of UK waters

MSN 1827 categorises the waters around United Kingdom into non-sea areas or categorised waters for the purposes of Merchant Shipping legislation. These categorisations are given statutory force by way of Regulation 2 of the Merchant Shipping (Categorisation of Waters) Regulations 1992. For the purposes of implementing the EU Regulation in the UK, ships on a seagoing voyage are therefore considered to be those that operate to the seaward of these non-sea areas or categorised waters.

4.4. Incidents involving passenger ships – a global perspective

Thankfully, catastrophic incidents involving passenger ships – such as the recent sinking of the Costa Concordia off the coast of Italy - are rare. Whilst Table 6 is not definitive, it does give a global perspective on the most significant incidents involving passenger ships which have occurred globally since 1983.

Table 6: Significant incidents involving passenger ships at sea

Year	Location	Name of ship & flag State	Death toll
2012	Italy	Costa Concordia (Italy)	30+
2011	Tanzania	Spice Islander I (Tanzania)	187
2008	The Philippines	MV Princess of Stars (Philippines)	832
2006	Red Sea	MS al-Salam Boccaccio 98 (Egypt)	1,018
2005	United States	Ethan Allen (US)	20
2002	The Gambia	MV Joola (Senegal)	1,863
2003	Chandpur, Bangladesh	MV Nazreen 1 (Bangladesh)	528
2000	Sulawesi, Indonesia	Cahaya Bahari (Indonesia)	550
2000	Greece	MS Express Samina (Greece)	81
1999	Norway	MS Sleipner (Norway)	16
1996	Lake Victoria, Tanzania	MV Bukoba (Tanzania)	894
1994	Baltic Sea	MS Estonia (Estonia)	852
1993	Baltic Sea	MS Jan Heweliusz (Poland)	54
1991	Italy	Moby Prince (Italy)	140
1990	Skagerrak	Scandinavian Star (Bahamas)	158
1989	Danube, Romania	Mogosoia (Romania)	161
1987	English Channel	Herald of Free Enterprise (UK)	193
1987	The Philippines	MV Doña Paz (Philippines)	4,375
1986	Meghna River, Bangladesh	Shamia (Bangladesh)	600
1986	Dhaleswar River, Bangladesh	Atlas Star (Bangladesh)	500
1986	Black Sea	Admiral Nakhimov (Russia)	423
1983	Volga, Russia	Alexander Suvorov (Russia)	177

Source: DfT research

4.5. Incidents involving passenger ships – an EU perspective

The European Maritime Safety Agency (EMSA) reported in its 2009 *Maritime Accident Review* that in 2009 there were no major passenger ship accidents in and around EU waters and that 4 lives were lost (down from 6 in 2008 and 10 in 2007), see Table 6. However, there were, once again, 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. EMSA comments that whilst the spectres of the accidents involving the ferries *Estonia* and the *Herald of Free Enterprise*, on which many hundreds of people lost their lives, are now decades in the past, it is important that the fight to ensure that passenger ships are built and operated more safely in the future continues.

EMSA reports that 135 passenger ships (121 ferries and 14 cruise ships) were reported as being involved in accidents in 2009, which was almost the same as the 134 in 2008 (114 ferries and 20 cruise ships). This was the second highest category for vessel accidents, representing almost 22% of the EU vessel accident total (up from 18% in 2008 and 20% in 2007). Almost 43% of passenger ship accidents involved ferries hitting infrastructure, around 22% were groundings, almost 15% involved collisions with other vessels and 8% were fires or explosions. The EMSA report provides details on some of the most serious incidents which have taken place in the previous year. Some of those which have taken place in the UK and/or involved a passenger ship are briefly set out below:

- The 6,000 GT ferry *Jonathan Swift* was holed after crashing into the dock at the port of Holyhead, Wales. There were no injuries reported.
- A heavy goods vehicle forced open the rear loading door of the 19,600GT ferry *Stena Voyager* while it was en route from Stranraer to Belfast. There were no injuries reported.
- One passenger and one crew member were injured when the 11,200GT ferry *Hrossey* was hit by gale force winds and huge waves off Sumbrugh Head, Shetland Islands.
- Three passengers were injured and many others were treated for shock when the 29,700GT ferry *Gotland* hit the 6,500GT ferry *Gotlandia II* in heavy fog just outside the port of Nynashamn, Sweden.
- 153 passengers had to be evacuated after the 11,200GT ferry *Richard With* ran aground off the port of Trondheim, Norway.

- The 30,700GT ferry *Vincenzo Florio* caught fire off Sicily, Italy. As a result, 456 passengers and crew members were evacuated in life boats following which 29 were reported to have been hospitalised.
- A number of passengers panicked and jumped overboard when the 47,250GT cruise ship *Zenith* had a fire on board while it was berthed at the Frihamnen terminal, Stockholm.
- 6 passengers were taken to hospital after inhaling smoke from a fire on board the 35,736GT ferry *Athara*, which began when it was en route from Genoa, northern Italy.

As in 2008, there were no ferry sinkings in 2009 (compared with 3 in 2007), see Table 7. There were also no cruise ship sinkings. The number of cruise ships involved in accidents was down 30% in comparison with 2008, and down almost 58% on 2007. The types of accidents were fairly evenly spread in terms of groundings (Table 8), collisions (Table 9) and fires or explosions (Table 10).

Table 7: Loss of life in the EU by ship type: 2006 to 2009

Ship Type	2006	2007	2008	2009
General Cargo Ships	14	20	21	17
Bulk Carriers	4	0	3	2
Tankers	2	3	9	2
Container Ships	2	0	2	1
Cruise Ships	3	4	2	1
Ferries	2	6	4	3
Fishing Vessels	42	31	30	16
Other Vessel Types	7	18	11	10
TOTAL	76	82	82	52

Source: European Maritime Safety Agency

Table 8: Sinkings in the EU by ship type: 2006 to 2009

Ship Type	2006	2007	2008	2009
General Cargo Ships	11	10	10	6
Bulk Carriers	1	1	0	0
Tankers	3	0	1	0
Container Ships	0	1	0	0
Cruise Ships	0	1	0	0
Ferries	4	3	0	0
Fishing Vessels	18	27	29	18
Other Vessel Types	8	12	21	4
TOTAL	45	55	61	28

Source: European Maritime Safety Agency

Table 9: Groundings in the EU by ship type: 2006 to 2009

Ship Type	2006	2007	2008	2009
General Cargo Ships	51	94	103	67
Bulk Carriers	12	14	12	9
Tankers	18	23	20	28
Container Ships	11	10	18	10
Cruise Ships	2	3	5	2
Ferries	13	21	21	28
Fishing Vessels	6	14	20	20
Other Vessel Types	4	18	18	13
TOTAL	117	197	217	177

Source: European Maritime Safety Agency

Table 10: Collisions in the EU by ship type: 2006 to 2009

Ship Type	2006	2007	2008	2009
General Cargo Ships	96	115	104	73
Bulk Carriers	10	17	16	20
Tankers	37	23	31	30
Container Ships	18	42	31	30
Cruise Ships	4	12	8	5
Ferries	40	61	69	75
Fishing Vessels	7	17	14	22
Other Vessel Types	5	17	35	37
TOTAL	217	304	308	292

Source: European Maritime Safety Agency

Table 11: Fires and explosions in the EU by ship type: 2006 to 2009

Ship Type	2006	2007	2008	2009
General Cargo Ships	18	28	22	24
Bulk Carriers	2	1	4	6
Tankers	6	11	11	2
Container Ships	5	3	4	2
Cruise Ships	0	3	3	2
Ferries	5	14	14	9
Fishing Vessels	6	16	14	9
Other Vessel Types	4	15	17	13
TOTAL	46	91	89	67

Source: European Maritime Safety Agency

4.6. Fatalities and injuries reported to Marine Accident Investigation Branch (MAIB)

The Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, places a duty on the Master or ship owner to report accidents and serious injuries, occurring onboard a UK ship or any other ship in UK waters. Table 12 shows the deaths and injuries to passengers, by type of injury; onboard UK registered merchant vessels of 100 GT and over, in both UK waters and non UK waters between 1999 and 2009.

Table 12: Death and injury statistics: Passengers onboard UK registered vessels; 1999 to 2009

Injury type	Year											
	'99	'09	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10
Deaths	1	1	1	0	0	0	1	1	0	2	1	2
Fractures	66	74	111	110	138	114	79	82	79	90	74	71
Other injuries	13	40	26	24	48	32	29	31	27	78	40	20
Total	80	115	138	134	186	146	109	114	106	170	115	93

*Source: MAIB
(also published in Transport Statistics Great Britain Table TSGB0517
<http://www.dft.gov.uk/statistics/tables/tsqb0517>)*

It should be noted that no non UK vessels have reported passenger fatalities to the MAIB during this same period. It should be further noted that the deaths and injuries reported to the MAIB have not necessarily occurred directly in connection with the operation of the vessel.

4.7. The marine insurance sector – from an Athens perspective

Insurance costs vary significantly from one ship to another. Shipowner's insurance requirements cover a plethora of risks and liabilities, including Hull & Machinery (H&M), cargo, and Protection & Indemnity (P&I).

P&I insurance is a form of marine insurance provided by a P&I Club. A P&I club is a mutual (i.e. co-operative) insurance association that provides cover for its members, who will typically be ship-owners, ship-operators or charterers. Unlike a marine insurance company, which is answerable to its shareholders, a P&I club is the servant only of its members. P&I insurance tend to cover a range of less

certain and quantifiable risks, and include most third party liabilities. In the passenger sector, third party liabilities tend to include liabilities with regard to passengers, luggage and vehicles.

The International Group of Protection & Indemnity Clubs (IGP&I Clubs) includes 13 clubs which insure almost half of the world's passenger ships. Five of these clubs are based in the UK. *The world merchant fleet in 2010, Statistics from Equaxis* indicates that the IGP&I Clubs insure approximately 46% of the world's passenger ships and approximately 83% of the world's passenger ship tonnage overall.

4.7.1 Non-war/terrorism insurance cover

The IGP&I Clubs provide insurance cover for third party liabilities for shipowners through a claim sharing agreement between themselves ("the Pooling Agreement"). The claim sharing agreement provides for different layers of insurance cover, along the following general lines:

- the first \$8 million of any claim is borne by the individual club whose shipowner has incurred the claim;
- the excess of any claim above \$8 million up to \$30 million is shared by the Clubs under the Pooling Agreement; and
- the excess of any claim above \$30 million up to \$2 billion is covered by reinsurance obtained collectively by the Clubs with commercial insurers (such as Lloyd's).

Shipowners that have not entered their ship into an IGP&I Club tend to take out conventional premium-based marine insurance. These insurers are profit-making firms where the level of liability cover required will correlate closely with premiums charged. Generally it is the operators of small passenger ships that seek premium-based marine insurance because they have less desire to 'pool' their relatively small risks with operators of larger ships. Premium based insurers tend to charge a one-off amount thereby giving shipowners certainty with respect to annual insurance costs.

Ships carrying 12 passengers or less are not required to maintain compulsory insurance under the 2002 Protocol for non war/terrorism risks.

4.7.2 War/terrorism cover

Whilst there is no exclusion from liability under the Athens Convention where damage occurs as a result of an act of war/terrorism, there is a need under the 2002 Protocol to provide cover for war/terrorism incidents separately from non-war/terrorism incidents (e.g. a collision).

After the 2002 Protocol was negotiated, the IGP&I Clubs indicated that they were not willing, for reasons of mutuality, to provide the liability cover required under the 2002 Protocol to shipowners for war/terrorism risks. At its meeting in October 2006, the Legal Committee of the IMO accepted a solution that requires carriers to be liable for terrorism related incidents to a limit of 250,000 SDR per passenger, subject to an overall limit of 340 million SDR (see section 1.6).

The industry have advised that at present a shipowner might purchase primary war risk insurance cover (Hull War Risks and P&I War Risks) from the commercial insurance market. This is likely to be supplemented by an additional amount of cover (\$500 million) purchased by the IGP&I Clubs. This cover is not however sufficient because it is not available in accordance with the provisions of the 2002 Protocol. All carriers will therefore need to have additional war/terrorism cover.

The insurance certificates covering this risk are likely to be issued by a specialist Certificate of Financial Responsibility (COFR) provider. Marsh Ltd, which is a large insurance broker based in London, has confirmed to the IMO that it will provide the necessary insurance. It will do this by establishing a panel of insurers that are willing to cover the risk and a specialist agency to issue the necessary documentation to the shipowner for approval by the State. Marsh Ltd operate in a similar way to premium based insurers and are the only entity which has so far expressed an interest in establishing a mechanism to ensure cover is available for war/terrorism risk.

Marsh Ltd have indicated that in order to be able to provide the necessary war/terrorism cover as required by the 2002 Protocol, a shipowner must have primary war risk insurance i.e. Hull War Risk cover, in place and have access to a second layer of P&I War Risk such as that purchased by the IGP&I Clubs. If a shipowner does not have access to this second layer, then the shipowner is likely to be charged a higher premium for war/terrorism cover required by the 2002 Protocol.

Ships carrying 12 passengers or less are not required to maintain compulsory insurance under the 2002 Protocol for war/terrorism risks.

4.8. The Cost of Past incidents

There have been very few major incidents in EU waters in recent history involving passenger ships. However, as demonstrated by the recent sinking of the Costa Concordia off the coast of Italy, such incidents do still occur, and when they do they can be very costly (although in the case of the Costa Concordia, the full costs are not yet clear). The only major incident that has occurred that we are able to analyse from a cost perspective is the *Estonia* incident. When the ferry *Estonia* sank in 1994, 852 persons lost their lives. The insurance provider in this instance was the Skuld P&I Club. The total cost of the claim was US\$ 85 million according to the IGP&I Clubs. It should be noted that whilst most of the compensation would have been the settlement of passenger claims, the total cost of the claim also includes crew claims and costs, which would have been covered by their employment contracts and not covered by the Athens Convention.

Table 13 shows the breakdown of claims that have been paid by the IGP&I Clubs between the period 20th February 2004 and 20th February 2010. The IGP&I Clubs have advised that the majority of claims in Table 13 would have been settled out of court because of negligence on the part of the shipowner and it is unlikely that such claims would have been subject to the limits of liability of the Athens Convention or other international instruments because of the shipowner's willingness to settle claims for death and personal injury in full.

Table 13 (Passenger claims paid by IGP&I Clubs: 2004 to 2010)

Personal Injury/Death – Non Crew (Claims above US\$500, 000 from 20 Feb 2004 to 20 Feb 2010)				
Total number of incidents where claims incurred were: US\$500, 000 – US\$999,999	Total number of incidents where claims incurred were: US\$1million – US\$4, 999, 999	Total number of incidents where claims incurred were: > US\$5 million:	Total involving all vessels irrespective of flag:	Total involving UK flagged vessels:
39	28	4	71	5

Note: This data may contain a small number of claims paid to stevedores and/or the family of crew members. The data does not contain any information involving claims involving the US litigation system.

This data does not however provide any information on the number of claimants in relation to each incident. This is important because it is not possible to ascertain the amount claimed per passenger, which is the basis on which the maximum level of liability under the Athens Convention and the 2002 Protocol is calculated.

Consultees are invited to submit any additional evidence that is available on the average claim per passenger in these 71 incidents, and the extent that these claims were subject to the existing liability limits contained in the Athens Convention and other existing legislation. For claims that were not subject to liability limits, how many individual claims over 400,000 units of account were paid?

5. POLICY OBJECTIVES

The policy objective is to implement the EU Regulation in the UK in order to enhance the protection that is available to passengers travelling on voyages that the EU Regulation is applied to, whilst only applying the EU Regulation to additional voyages beyond its minimum scope when the benefits justify the costs. The EU Regulation introduces higher liability limits on carriers; requires carriers to have compulsory insurance; and provides claimants with the right of direct action against insurers. The intended effect is to provide an enhanced framework of compensation in the event of the death or personal injury of a passenger, or the loss of or damage to luggage.

6. OPTIONS

This impact assessment assesses the additional costs and benefits of the policy options that are discussed below. The EU Regulation will enter into force in the UK on 31 December 2012. The UK

needs to introduce new regulations and make changes to existing domestic legislation in order to successfully implement the EU Regulation and ratify the 2002 Protocol. However, it should be noted that most of the requirements of the 2002 Protocol will automatically apply in the UK due to the EU Regulation being directly applicable. Government intervention is needed to successfully implement the EU Regulation in the UK and to define the scope and application of the EU Regulation to domestic seagoing voyages. This requires new legislation to be introduced in the UK. This UK legislation will enter into force at the same time as the EU Regulation (i.e. 31 December 2012).

The EU Regulation automatically applies to the carriage of passengers by sea on a) international voyages and b) voyages within a single Member State on board ships of Class A and B from 31 December 2012. The EU Regulation provides an opportunity for Member States to decide whether to derogate their obligations in respect of ships of Class A and B until 31 December 2016 and 31 December 2018 respectively. The EU Regulation does however indicate that Member States may apply the EU Regulation to all domestic seagoing voyages (see the categorisation of UK waters in section 4.3). Article 1(3) of the EU Regulation formally reserves the Commission's right to extend the application of the 2002 Protocol to ships of Class C and D by July 2013.

Consideration of the options is therefore needed with regard to the application of the EU Regulation to ships on domestic seagoing voyages in the UK. Options 1, 2 and 3 of this impact assessment explore this issue in detail. However, it should be noted that none of these options would apply the EU Regulation to voyages to the Channel Islands and the Isle of Man (which are neither domestic nor international in nature and therefore out of scope of the EU Regulation) and non-seagoing routes such as those between the UK mainland and the Isle of Wight (which are out of scope of the EU Regulation). The Channel Islands and the Isle of Man will be introducing their own legislation to ensure that there is no gap in the protection afforded to passengers.

With regard to any domestic seagoing voyages in the UK which are outside the scope of the EU Regulation it is proposed to continue to apply the existing UK requirements to these voyages because it is considered appropriate that there is some regime in place to protect those travelling onboard a domestic seagoing passenger ship in the event of the death of, or personal injury, to passengers. Without any regime of liability, passengers would only be protected in a piecemeal way. Without a limit of liability, shipowners may find it difficult to obtain insurance to cover the risks associated with an incident and shipowners may consider the risks to be too great to operate a particular service.

6.1. 'Do nothing' option

A counterfactual 'do nothing' option would in practice mean that the UK would simply let the EU Regulation apply without introducing new regulations or making changes to existing domestic legislation. This would create ambiguity and result in confusion as both the Athens Convention (as set out in the Merchant Shipping Act 1995 and supported by a number of pieces of secondary legislation) and the 2002 Protocol (introduced in the UK by the EU Regulation) would apply without clarification with regard to which ships it applies to and from when. Although the Courts would be bound to give effect to the EU Regulation, there may be difficulty in determining which piece of legislation had primacy.

There is also a risk that if the 'do nothing' option was to apply, the UK would be in breach of the EU Regulation, as it applies Article 7(2) of the 2002 Protocol. The 2002 Protocol stipulates that "*a State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1 [400,000], provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1.*" At present the limit of liability set out the Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998 is 300,000 SDR.

Failure to remove or amend inconsistent domestic legislation and a failure to provide a mechanism to apply the EU Regulation effectively would result in infraction proceedings being instigated by the European Commission.

For the reasons set out above the 'do nothing' option is considered inappropriate. The 'do nothing' option would confuse the courts, carriers and passengers alike and create a significant risk of infraction for the UK by the European Commission.

For the purposes of this impact assessment, the 'do nothing' option is the baseline against which the other policy options are assessed.

6.2. Option 1: Introduce new legislation to implement the EU Regulation in the UK and apply the EU Regulation to all passenger ships on domestic seagoing voyages

Option 1 is the application of the EU Regulation to *all* passenger ships on domestic *seagoing* voyages, irrespective of the Class of the ship. The EU Regulation extends the application of the 2002 Protocol to the carriage by sea within a single Member State on board ships of Classes A and B and indicates that Member States may apply the EU Regulation to all *other* domestic *seagoing* voyages.

The requirements of the EU Regulation would however only be applied to operations outside of categorised waters (i.e. when a ship is on a seagoing voyage). A ship of EU Class C or D or a ship of UK Class III, VI or VI(A) is certified to go to sea, but such a ship may operate within categorised waters (i.e. waters not regarded as sea). In such circumstances, the ship would not be subject to the requirements.

Under Option 1, ships of EU Class A operating on domestic seagoing voyages would be required to comply with the EU Regulation from 31 December 2016, and all other ships operating on domestic seagoing voyages including ships of EU Class B would be required to comply with the EU Regulation from 31 December 2018. This means that the new liability limits and other new requirements would apply to domestic seagoing voyages involving these vessels from these dates.

The application of the EU Regulation to all ships operating on domestic seagoing routes is additional to the minimum requirement of the EU Regulation. However, Article 1(3) of the EU Regulation states that no later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order to extend the scope of the EU Regulation to ships of Classes C and D. If the EU was to proceed with this policy and the UK had implemented Option 1, minor modifications would still be necessary to cover Class C and D ships operating in categorised waters if such a requirement was proposed.

By implementing Option 1, the UK would be applying the enhanced regime of liability for damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage carried by sea uniformly to all seagoing passenger services, irrespective of whether or not these services were domestic or international. The EU Regulation does not however provide sufficient powers to apply the 2002 Protocol to voyages from the UK mainland to the Crown Dependencies as a matter of EU law and separate legislation introducing the 2002 Protocol as a matter of international law may be necessary.

6.3. Option 2: Introduce new legislation to implement the EU Regulation in the UK and apply the EU Regulation to passenger ships of EU Class A, B, C and D on domestic seagoing voyages

By taking forward Option 2, the UK would apply the EU Regulation to Class A or B passenger ships on domestic seagoing voyages in line with the minimum scope of the EU Regulation and additionally to Class C or D passenger ships on domestic seagoing voyages.

Under Option 2, ships of EU Class A operating on domestic seagoing voyages would be required to comply with the EU Regulation from 31 December 2016, and ships of EU Class B, C and D operating on domestic seagoing voyages would be required to comply with the EU Regulation from 31 December 2018. This means that the new liability limits and other new requirements would apply to domestic seagoing voyages involving these vessels from these dates.

The application of the EU Regulation to Class C or D ships operating on domestic seagoing routes would be additional to the minimum requirement of the EU Regulation. However, it is important to note that Article 1(3) of the EU Regulation states that no later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order to extend the scope of the EU Regulation to ships of Classes C and D.

Whilst passengers travelling on domestic passenger ships other than Class A, B, C or D (i.e. those certified to UK Class II(A), III, VI or VI(A)) would not receive the benefits associated with the implementation of the EU Regulation as set out in Section 1.4, the operators of such ships would not have to pay the associated costs of applying the EU Regulation.

Passengers travelling on such ships would continue to be covered by conditions established by the Athens Convention rather than the EU Regulation. The limits of liability applicable to carriers other than those operating ships of EU Class A, B, C or D would be lower than those covered by the EU Regulation and the additional protection established by the 2002 Protocol such as strict liability, the need to maintain compulsory insurance and the right of direct action against the insurer would not apply.

Whilst Option 2 would create a two-tiered approach for passengers travelling on domestic seagoing passenger services in the UK, there is a legal obligation to provide notice to passengers travelling under

the Athens Convention and the EU Regulation requires carriers to provide information to passengers travelling under the 2002 Protocol.

6.4. Option 3: Introduce new legislation to implement the EU Regulation in the UK and apply the EU Regulation to passenger ships of EU Class A and B only.

By taking forward Option 3, the UK would be implementing the mandatory provisions of the EU Regulation only. With regards to domestic seagoing voyages, the UK would only apply the EU Regulation to Class A and B passenger ships. Option 3 would make use of the available derogations in respect of ships of Class A and B. The Regulation would therefore apply to these ships from 31 December 2016 and 31 December 2018 respectively. This means that the new liability limits and other new requirements would apply to domestic seagoing voyages involving these vessels from these dates. Passengers travelling on domestic passenger ships other than Class A or B would continue to be covered by conditions established by the Athens Convention.

Passengers travelling on ships of Class A or B on domestic seagoing voyages would have the protection of an enhanced regime of liability for damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage carried by sea akin to the liability regime that applies to international passenger services.

Whilst the limits of liability applicable to carriers other than those operating ships of Class A or B would be lower than those covered by the EU Regulation and the additional protection established by the 2002 Protocol such as strict liability, the need to maintain compulsory insurance and the right of direct action against the insurer would not apply, the associated costs to industry would also not apply.

Whilst Option 3 would create a two-tiered approach for passengers travelling on domestic seagoing passenger services in the UK, there is a legal obligation to provide notice to passengers travelling under the Athens Convention and the EU Regulation requires carriers to provide information to passengers travelling under the 2002 Protocol.

6.5. Other options discounted

As reported previously in this impact assessment, the EU Regulation provides an opportunity for Member States to derogate their obligations in respect of ships of EU Class A and B until 31 December 2016 and 31 December 2018 respectively. The possibility of applying the EU Regulation to ships of EU Class A and B from 31 December 2012 was discounted because such an approach does not accord with the Government's principles of better regulation. The Government's official guidance on the transposition of European Directives⁵ requires that the practice of "gold-plating" be avoided unless there are exceptional circumstances, justified by a cost-benefit analysis and consultation with stakeholders. Since the Government's definition of gold-plating includes "not taking full advantage of any derogations which keep requirements to a minimum"⁶ the option to apply the EU Regulation to ships of EU Class A and B from 31 December 2012 was discounted. The fact that the majority of shipowners already take out, on a voluntary basis, third party insurance to cover their non-war related risks reinforced this approach.

SECTION 7 - COSTS AND BENEFITS OF OPTION 1

Due to the limitations of the available evidence base, it has not been possible to monetise most of the costs and benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided in this impact assessment.

Following the consultation, we will consider whether further analysis could be undertaken to attempt to improve the extent that the costs and benefits are monetised. To assist with this process, **consultees are invited to submit any additional evidence on the costs and benefits of the policy options that are discussed in this impact assessment.** Any additional evidence that is submitted will be taken into account when the impact assessment is updated after the consultation.

Scope of the impact assessment

This impact assessment assesses the additional costs and benefits that would arise as a result of each of the policy options that are discussed in this impact assessment compared to those that would arise

⁵ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-775-transposition-guidance.pdf>

⁶ Page 6 of the above source.

under the 'do nothing' option. The appraisal period runs from 31 December 2012 to 31 December 2022 – a period of 10 years from the introduction of the legislation.

Under the 'do nothing' option, the EU Regulation would still be in force and directly applicable in the UK from 31 December 2012. Therefore, businesses would have a legal duty to comply with the requirements of the EU Regulation when applicable to them from this date. Consequently, for the purposes of this impact assessment, the costs and benefits associated with the application of the EU Regulation to voyages which the EU Regulation is directly applicable are not counted as costs and benefits of the new legislation that would be introduced in the UK under these policy options. In particular, as the EU Regulation is directly applicable to international seagoing voyages and ships of EU Class A or B on domestic seagoing voyages, the costs and benefits associated with the application of the EU Regulation to these voyages are not counted as costs and benefits of the policy options that are assessed in this impact assessment.

Where the policy options go beyond the minimum scope of the EU Regulation, this impact assessment assesses the additional costs and benefits of applying the EU Regulation to the additional classes of passenger ships on domestic seagoing voyages that would be covered under each of the policy options. It should be noted that the categories of costs and benefits that have been identified in this impact assessment would also apply as a result of the application of the EU Regulation to passenger ships on international seagoing voyages and passenger ships of EU Class A or B on domestic seagoing voyages.

With regards to domestic seagoing voyages, any ship operating a seagoing voyage with an origin and destination in the UK would be required to comply with the EU Regulation under Option 1. On the basis of the above approach, the additional costs and benefits of the new legislation that would be introduced under Option 1 would arise as a result of:

- The UK applying the EU Regulation to all passenger ships on domestic seagoing voyages as opposed to only EU Class A and B ships - the provisions would be applied to the additional ship types from 31 December 2018;
- The MCA issuing state certification (Article 4bis of the Protocol); and
- The introduction of penalties, offences and the jurisdiction of the applicable UK court to ensure ships comply with the EU Regulation and the 2002 Protocol.

The additional classes of passenger ships on domestic seagoing voyages that would be subject to the EU Regulation under Option 1 include a) EU Class C and D ships, of which there are around 32 currently on the UK flag, and b) UK Class II(A), III, VI, and VI(A) ships, of which there are around 166 on the UK flag. In addition, as previously mentioned there are certain circumstances in which ships which have other UK class certificates (such as a UK Class II certificate) may service domestic seagoing routes and therefore be subject to the EU Regulation under this policy option.

As reported in section 6.5 of this impact assessment, the EU Regulation provides an opportunity for Member States to derogate their obligations in respect of ships of EU Class A and B until 31 December 2016 and 31 December 2018 respectively, and the option *not* to derogate these obligations was discounted on the basis that such an approach does not accord with the Government's principles of better regulation. Given that under the 'do nothing' option the derogations would not be taken up, there are additional costs and benefits of Option 1 associated specifically with derogating the obligations in respect of ships of EU Class A and B.

The focus of an impact assessment is on the impacts of the policy options that are being considered which fall upon the UK, including the impacts on the public sector in the UK, UK businesses, the third sector in the UK and impacts on UK consumers. As well as impacting on UK-flagged vessels, it should be noted that some foreign-flagged vessels could be potentially affected by the legislation that would be introduced under these policy options, although the Maritime and Coastguard Agency advise that it would be a rare occurrence to have a foreign-flagged passenger ships operating on a domestic route. It should be noted that not all UK-registered ships are UK-owned and that foreign-flagged ships can be UK-owned. The implication of this is that the impacts assessed in this impact assessment may fall on both UK and non-UK businesses. However, it is assumed that it is likely that the majority of domestic seagoing passenger services in the UK will be run by UK businesses. Therefore, for the purposes of this impact assessment, estimates of the costs and benefits to the owners of the ships that would be affected by the legislation that would be introduced under these policy options are used as a proxy for the costs and benefits to UK businesses where relevant.

7.1. Costs of Option 1

The costs of Option 1 can be separated into (i) costs associated with the Regulation *per se* under this policy option; and (ii) costs associated with derogating the obligations in respect of ships of EU Class A and B under this policy option.

7.1.1. Costs of Option 1 associated with the Regulation *per se*

Table 14: Summary of costs of Option 1

Provision / Aspect		Cost	Falls upon
Insurance Costs			
Strict Liability		Potential increase in cost of insurance premiums/contributions directly attributable to the change from fault based to strict liability.	Shipowners
Compulsory Insurance	Non-war cover	Potential cost of insurance premiums/contributions to meet the requirement to have compulsory non-war cover (depending on shipowners' level of cover in the baseline).	Shipowners
	War/terrorism cover	Potential cost of insurance premiums/contributions specifically to cover liabilities under conditions of war/terrorism.	Shipowners
Limits of Liability	Death and Personal Injury	Potential increase in cost of insurance premiums/contributions directly attributable to increases in liability limits.	Shipowners
	Loss of or damage to luggage and vehicles	Potential increase in cost of insurance premiums/contributions directly attributable to increases in liability limits.	Shipowners
Compensation in respect of mobility equipment or other specific equipment		Potential increase in cost of insurance premiums/contributions directly attributable to introduction of new liabilities.	Shipowners
Other Costs			
Advance payment		Cost of paying initial sums to claimants before investigation or liability is established.	Shipowners
Changes to Time Bar provisions		Potential increase in the number of claims due to increases in the time allowed to lodge them.	Shipowners
Familiarisation		Cost of familiarisation with the new requirements.	Shipowners
Administrative costs		Administrative costs due to additional requirements.	MCA & Shipowners
Monitoring & Enforcement		Monitoring and enforcement costs.	MCA

Factors that determine the cost of insurance

The insurance industry have advised that the cost of insurance is determined by a wide range of factors, including the size and type of vessel, number of passengers carried, flag State, Port State Control risk categorisation, historical claims record, recent significant events and market capacity. Any one of these aspects could have an impact on the cost of insurance faced by shipowners. The historical claims record of an operator is likely to have the most significant impact on the cost of insurance.

The insurance industry has also advised that there are also a number of external factors. For example, the IGP&I Clubs buy their reinsurance from the Lloyd's and corporate markets (UK and overseas) as a package covering the full spectrum of risks covered. Reinsurance availability and cost will be driven by many factors including non-marine events, such as hurricanes and the global economy in general. Market capacity is a crucial factor in determining underwriter's attitude both to writing and pricing risk. They also closely monitor convention and legislation changes which could impact on actual or potential exposure and reflect this in their pricing.

Initial consultations with industry indicate that premium-based insurance may be more sensitive to the changes required by the 2002 Protocol, meaning that the cost of premium-based insurance could

increase more than insurance provided by a P&I Club. This may be because the existing level of cover available for passenger ships entered with the P&I Clubs (US\$ 2 billion per ship) should still be sufficient to cover the increased liability in the majority of situations. However, those ships insured by other institutions would have to insure against greater limits of liability overall. It is possible therefore that this would have an impact on insurance premiums charged.

7.1.1.1. Strict Liability

Under the 2002 Protocol, the basis of liability is determined by the cause of the damage. Carriers are strictly liable (i.e. the carrier is liable without the need to prove fault or neglect) for shipping incidents such as shipwreck, capsizing, fire, explosion or defect in the ship. For non-shipping incidents (e.g. hotel-type incidents such as tripping on a carpet), the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect, in respect of non-shipping incidents, would still lie with the claimant as it does under current domestic legislation.

Consultations with industry representatives have indicated that the introduction of an element of strict liability is not a serious concern and may not, necessarily, affect the insurability of the liability regime. It has been suggested by industry representatives that a provision for an element of strict liability will make little difference either to the ability of the carrier to obtain insurance cover or to the overall limit of that cover. However, no evidence is currently available to enable the potential costs of this provision to be monetised in this impact assessment. **Consultees are invited to submit any additional evidence that is available on any potential additional costs that could arise as a result of this provision.**

7.1.1.2. Compulsory insurance

Non-war insurance cover

Shipowners may insure against traditional third-party liabilities established by the 2002 Protocol by entering their ship with a P&I Club or by purchasing premium-based insurance. The impacts of the changes resulting from the 2002 Protocol on individual shipowners would vary depending upon how shipowners currently insure their vessels.

UK passenger shipowners are not currently required by law to have insurance cover to meet their liability under the Athens Convention. Under Option 1, all passenger ships on a seagoing voyage (except those carrying 12 passengers or less) would be required to maintain insurance cover to meet the increased liability under the 2002 Protocol up to 250,000 SDR per passenger per carriage. As an indicative example, the owner of a ship which is certified to carry 1,000 passengers would be required under the 2002 Protocol to maintain compulsory insurance with direct action against the insurer to provide anticipatory guarantees⁷ for approximately £243 million⁸.

With regard to the shipowners operating UK registered passenger ships, the UK's Chamber of Shipping have indicated that the majority, if not all, of the shipowners already have effective insurance covering traditional 3rd party risks. It is assumed that the additional cost to these shipowners of obtaining compulsory "non-war" insurance is therefore likely to be insignificant because the existing level of the cover provided by the IGP&I Clubs should, in the majority of circumstances, be sufficient to cover the enhanced limits of liability established by the 2002 Protocol. However, for any shipowner that had previously chosen not to take out insurance, the costs would be greater.

Although it is likely that most shipowners operating passenger ships on domestic seagoing voyages will already have cover to meet this requirement, it is noted that there could potentially be additional costs to shipowners that have not previously chosen to take out such insurance. However, due to the limitations of the available evidence base (e.g. no evidence on the number of such shipowners is currently available), it has not been possible to monetise these costs in this impact assessment.

Consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect, including whether current levels of cover are sufficient to meet the requirements of the 2002 Protocol with respect to non-war insurance.

⁷ Anticipatory guarantees simply guarantee that a payment will be made in the event of an incident

⁸ 250 million SDRs assuming an exchange rate of £0.97 per SDR.

War/terrorism insurance cover

Under the 2002 Protocol carriers are to be liable for terrorism related incidents to a limit of 250,000 SDR per passenger, subject to an overall limit of 340 million SDR. The national limit of liability in the UK is currently 300,000 irrespective of the type of incident (although liability is fault based rather than strict). This could be considered to be the equivalent of a reduction in cover of 50,000 SDR for war/terrorism related incidents and a potential cost to the passenger in the event of an incident.

Whilst most carriers operating UK registered passenger ships on international voyages have some insurance covering war/terrorism risks, consultations with the industry indicate that carriers operating smaller UK registered passenger ships on domestic seagoing voyages may be less likely to have such cover. All passenger ships on domestic seagoing voyages (except those carrying 12 passengers or less) would however need this additional cover if Option 1 were to apply. This is therefore likely to be a new cost to passenger ships on domestic seagoing voyages under Option 1. Of the costs that it has been possible to monetise in this impact assessment, this cost is estimated to be the most significant cost resulting from Option 1.

Marsh Limited, a large insurance broker based in London has stated that it will devise an insurance product specifically for this purpose. It is not clear whether other insurers will offer similar products in the future. Marsh Limited have indicated that subject to finalisation of the product and the way it is priced, an early indicative estimate of the potential costs for war/terrorism cover up to the limits of liability stated in the 2002 Protocol, could be in the order of US\$0.03 per passenger per carriage for international voyages; as this estimate was provided this year, it is assumed that this estimate is in 2011 prices for the purposes of this impact assessment. Marsh Limited has indicated that the price of insurance for ships on domestic voyages is likely to be less because it is assumed that the risk to such ships is less than ships on international journeys. However, in the absence of evidence to suggest that it would necessarily cost less, the estimate of US\$0.03 (£0.02)⁹ per passenger per carriage has been used for the purposes of this impact assessment, although it should be noted that it is assumed that this is likely to be an overestimate of the likely costs.

In order to estimate the order of magnitude of the potential costs of this aspect of Option 1, the number of additional passenger trips that would be subject to the EU Regulation under Option 1 was estimated.

Firstly, data on the number of passengers carried on domestic routes and the ships operating on these routes in 2009 was obtained from a report entitled "Market:11 Market reports & outlook for ferry, cruise, ro-ro and hi-speed shipping" published by Shippax. It should be noted that, where multiple ships were shown to be operating on a route but there was no information of how the number of passengers carried on the route was divided between these ships, it was assumed that the number of passengers carried on the route was divided equally between each of the ships that were shown to be operating on the route; to the extent that this was not the case, the resulting estimates will be less accurate.

Secondly, this data was matched against information on the classification of these routes (i.e. whether they are seagoing or non-seagoing) and the ships operating on these routes (i.e. the classes of these ships) from the MCA in order to estimate the total number of domestic seagoing passenger trips, and the number of domestic seagoing passengers carried by different classes of vessel.¹⁰ [Where this has identified passengers being carried on ships that are not certified to carry more than 12 passengers, these ships have been excluded from this analysis as the need to have compulsory insurance does not apply to them.] It should be noted that this analysis used the latest classification of these vessels, and assumed that there have been no changes to the classification of these vessels since 2009; to the extent that this has not been the case, the resulting estimates will be less accurate.

On the basis of the above analysis, it was estimated that there were approximately 5.8 million domestic seagoing passenger trips in 2009, and that approximately 1.8 million domestic seagoing passenger trips were completed by the additional vessel classes that would be subject to the EU Regulation under Option 1 (i.e. EU Class C and D ships; UK Class III, VI, and VI(A) ships; and other UK Class ships operating on domestic seagoing routes).

⁹ Based on an exchange rate of \$1.57/£1, which is the average dollar/pound exchange rate for the previous full calendar year. This approach to currency conversion has been used in previous impact assessments.

¹⁰ For one ship, details of its class were not available. It was assumed that this ship has the same class as other ships operating on the same route.

However, it should also be noted that there exists a number of domestic seagoing routes for which it has not been possible to obtain data on passenger numbers. For this reason, it is assumed that the above estimates are likely to represent underestimates of the actual number of such passenger trips in 2009.

Given the limitations of the available evidence base, it has been assumed that the number of passenger trips completed by the additional vessel classes that would be subject to the EU Regulation under Option 1 would not change during the appraisal period.

Combining the estimate of passenger trips affected with the estimate of per passenger insurance costs gives an estimated total cost to industry of providing war and terrorism cover in the region of £36,000 (1.8 million x £0.02) per year from 2018.

This estimate is sensitive to the assumptions that have been made and the data sources that have been used, and is subject to a number of key uncertainties. Firstly, the number of passenger trips in future years that would be completed by the additional vessel classes that would be subject to the EU Regulation under Option 1 is highly uncertain. In particular, the actual number of passenger trips would be affected by future changes in demand on these routes and changes to the vessels operating on these routes during the appraisal period. Moreover, the approach used to derive an estimate of 2009 passenger trips is likely to be an underestimate owing to a lack of complete data on passenger routes, and is sensitive to the assumptions that have been made and the data sources that have been used. Secondly, the cost per passenger per carriage is subject to a range of uncertainties. The estimated cost is based on an estimate from Marsh Ltd of the potential price of this product. However, pricing is yet to be finalised and the estimate provided is for international voyages, and it is assumed that the cost for domestic voyages is likely to be lower. Finally, as explained previously, Marsh Ltd have indicated that in order to be able to provide the necessary war/terrorism cover as required by the 2002 Protocol, a shipowner must have primary war risk insurance (i.e. Hull War Risk cover) in place and have access to a second layer of P&I War Risk such as that purchased by the IGP&I Clubs. If a shipowner does not have access to this second layer, then the shipowner is likely to be charged a higher premium for war/terrorism cover required by the 2002 Protocol. This further complicates any estimate of the potential costs to industry of this aspect.

Consultees are invited to submit any additional evidence that is available on the potential costs of this aspect, including any additional evidence that it is available on the number of passenger trips on domestic seagoing routes at the vessel and route level, and the details and classification of the vessels operating on each of these routes; potential insurance costs of war/terrorism cover; and any additional costs of this aspect.

Administrative costs associated with making claims to insurance companies

Should any additional claims be made to insurance companies, it is likely that there would be some new administrative costs for shipowners. However, no evidence is currently available on the scale of these potential costs, so it has not been possible to estimate these potential costs in this impact assessment.

Consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect.

7.1.1.3. Limits of Liability

7.1.1.3.1. Death and personal injury

Under existing domestic legislation, the shipowner's limit of liability in the UK is prescribed as 300,000 SDR per passenger, per carriage, for carriers whose principal place of business is in the UK, and 46,666 SDR for other carriers. Under Option 1, the limits of liability for death and personal injury would be increased from 300,000 or 46,666 to 400,000 SDR per passenger per carriage. These new limits of liability would come into effect for domestic seagoing voyages involving EU Class A vessels from 31 December 2016 and all other ships operating domestic seagoing voyages from 31 December 2018 under Option 1.

Indications from initial consultations with the insurance industry suggest that limits of liability are not a key determinant of the cost of insurance charged to shipowners. However, it may be the case that a major accident might affect future insurance costs more than they would have been affected if the limits of liability remained at current levels. Due to the lack of available evidence to specifically attribute increases in insurance costs to increases in the limits of liability for death and personal injury, it has not been possible to monetise the potential additional costs of this aspect of Option 1. **Consultees are**

invited to submit any additional evidence that is available on the potential additional costs of this aspect.

7.1.1.3.2. Loss of or damage to luggage and vehicles

Under current regulations, the carrier's limit of liability with respect to loss or damage to luggage is established at 833 SDR, which is consistent with the 1974 Convention. Under the 2002 Protocol, this limit of liability increases to 2,250 SDR (a 270% increase).

For vehicles, other than those carried under a charter party, bill of lading of other contract primarily concerned with the carriage of goods and luggage carried by them, the limits of liability increase from 3,333 SDR under the 1974 Convention to 12,700 SDR per vehicle under the 2002 Protocol (a 381% increase).

For luggage other than that covered specifically as luggage or carried in a vehicle (i.e. hand luggage), the limit increases from 1,200 under the 1974 Convention to 3,375 SDR per passenger under the 2002 Protocol (a 281% increase).

Deductibles established under the 1974 Convention, set at 13 SDR for luggage and 117 SDR for vehicles, rise to 149 SDR and 330 SDR respectively under the 2002 Protocol.

These new limits of liability would come into effect for domestic seagoing voyages involving EU Class A vessels from 31 December 2016 and all other ships operating domestic seagoing 31 December 2018 under Option 1.

A shipowner's maximum limit of liability for claims relating to loss of or damage to luggage in respect of a ship carrying 1,000 passengers and 200 vehicles would be approximately £8 million¹¹. It is considered that this would be applicable to a large EU Class A or B ship, but that ships of EU Class C or D or UK Class III, VI or VI(a) tend to be smaller vessels, so their maximum limit of liability would be lower.

As there is no evidence available on the potential increase in insurance costs that shipowners would face specifically due to the increases in liability for loss or damage to luggage and vehicles under the 2002 Protocol, it has not been possible to monetise this aspect of the potential costs of Option 1.

Consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect.

7.1.1.4. Compensation in respect of mobility equipment or other specific equipment

The EU Regulation extends the requirements set out in the 2002 Protocol by providing that; should equipment used by a passenger of reduced mobility be lost or damaged then the liability will be governed by provisions of the Athens regime relating to the loss of or damage to cabin luggage. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident. The compensation paid will either be the replacement value or the repair costs depending on whether the equipment is lost or damaged. Carriers are not required by the EU Regulation to have compulsory insurance to provide compensation in respect of mobility equipment or other specific equipment.

Compensation in respect of mobility equipment shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs. The number of incidents per year which result in claims for compensation in respect of mobility equipment is not known, but initial consultations with the industry suggest the number of incidents involving mobility equipment is small because the passenger normally retains possession of such equipment unlike the aviation industry where such equipment is usually stored in the hold of the aircraft. At present, there is no legal requirement to pay this type of compensation. It has not been possible to monetise the additional costs of this aspect of Option 1 due to the limitations of the available evidence. It is however assumed that shipowners would not take out specific additional insurance to cover this risk given the relatively small amount of money involved and the fact that it is not a traditional risk that is covered by third party insurance in the shipping sector. Consultations with the shipping and insurance sectors have suggested that they are likely to self insure and cover such risks themselves. **Consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the potential number of claims per year in respect of mobility equipment or other specific equipment and their potential value.**

¹¹ SDR*0.97=GBP [(((2250+3375)*0.97)*1000)+((12700*0.97)*200)] = £7.92 million

7.1.1.5. Other Costs

7.1.1.5.1. Advance payment

The EU Regulation also provides for the advance payment of compensation for death or personal injury to cover the immediate economic needs and this payout should be proportionate to damage suffered by the claimant. Any payment should be made by the carrier within 15 days of the identification of the claimant. There is a minimum payment of €21,000 in the event of death. The EU Regulation states that this payment does not represent an acceptance of liability by the carrier, but should the carrier prove to be liable then any advance payment would be offset against any eventual payment. However, no advance payment would be refundable except in certain prescribed circumstances. Carriers are not required by the EU Regulation to obtain any additional compulsory insurance to provide advance payment. If it assumed that advance payment is only made after incidents where the shipowner is liable then there would be no additional cost of providing advance payment as it would be offset against the overall liability.

It is difficult to quantify this cost because in most cases the shipowner's liability would only be an offset of the costs of the advance payment against the eventual payment. The shipowner (or insurer or the P&I club to which the shipowner belongs) would simply be making a payout to claimants that is in any case due, and in two stages rather than in one lump sum. Therefore, for the purposes of this impact assessment, it has not been possible to monetise the potential costs of this aspect. However, **consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect.**

7.1.1.5.2. Changes to Time Bar provisions

The proposed changes to the time bar provisions effectively increase the amount of time that can elapse before a claim against a particular incident can no longer be lodged. It is possible that this could result in an increase in the number of claims lodged. This could potentially increase costs for carriers and insurance providers. However, it is not known to what extent the number of claims would increase as a result of this provision. In particular, there is no evidence currently available on the average length of time that elapses between incidents occurring and claims being submitted. Therefore, it has not been possible to monetise these potential costs in this impact assessment. **Consultees are invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted.**

7.1.1.5.3. Familiarisation

Carriers may incur costs familiarising themselves with the requirements under this policy option. However, it is assumed that it is likely that there would not be significant additional costs associated with familiarisation because the Athens Convention has been in effect for all domestic seagoing voyages since 1987. **Consultees are invited to submit any additional evidence on the potential for familiarisation costs as a result of Option 1.**

7.1.1.5.4. Costs to shipowners of applying for State Certificates

The 2002 Protocol states that a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that certain requirements have been complied with. With respect to a ship registered in a State Party, such a certificate shall be issued or certified by the appropriate authority of the State of the ship's registry. With respect to a ship not registered in a State Party, it may be issued or certified by the appropriate authority of any State Party.

UK domestic regulations would designate the Maritime and Coastguard Agency (MCA) as the appropriate authority in the UK for the purposes of issuing a certificate. The MCA is well placed to undertake such a role given it fulfils a similar function in respect of both the Civil Liability and Bunker Conventions.

It is likely that UK implementing legislation would indicate that two insurance certificates will be required for each ship, one for war/terrorism risks and the other for non-war risks. The MCA would then issue a

single certificate which would confirm that the required insurance is in place. The cost of issuing a State certificate under the Athens regime would, according to the MCA, be £31, which would be charged to industry on a full cost-recovery basis. Because the marine insurance year runs from 21st February, the owners of the additional ships that would be subject to the EU Regulation under Option 1 would be required to obtain a short term certificate covering the period from 31st December 2018 to 21st February 2019 and then an annual certificate from 21st February 2019 onwards. This cost would be charged to shipowners.

Under Option 1, all ships currently on the UK flag which operate passenger ships on seagoing voyages would require state certificates. It is estimated that around an additional 204 ships could be subject to the EU Regulation under Option 1. This comprises 198 ships of EU Class C or D, and UK Class III, VI, or VI(A) which are currently registered on the UK flag; plus 6 other vessels that were identified as operating on domestic seagoing passenger routes in 2009 when estimating the costs of insurance cover for war/terrorism risks (see section 7.1.2 onwards). On this basis, the total cost to shipowners of obtaining state certificates for these vessels has been estimated at approximately **£6,300** per year from 2018 assuming that the number of affected ships remains constant in future years. However, it should be noted that the number of additional ships that would be subject to the EU Regulation under Option 1 in future years is very uncertain. Firstly, data on all routes is not available, so it is possible there may be additional ships which operate UK seagoing voyages and are therefore subject to the EU Regulation. Secondly, it is possible that not all of the UK registered ships of EU Class C or D, and UK Class III, VI, or VI(A) will operate on domestic seagoing routes – some of these vessels may operate on non-seagoing routes. Thirdly, it should be noted that the number of affected ships may change over time.

In addition, there are likely to be administrative costs to shipowners of doing this, such as the time taken to prepare and submit an application. However, no evidence is currently available on these costs, so it has not been possible to monetise these costs in this impact assessment.

Consultees are invited to submit any additional evidence on the costs of applying for State Certificates.

7.1.1.5.5. Other administrative costs to carriers & the marine insurance sector

Carriers would be required to apply for compulsory insurance and financial guarantees. When applying for compulsory insurance or financial guarantees relating to war/terrorism, carriers would be likely incur a small additional administrative cost because such cover is unlikely to be in place already. However, it is assumed that no such additional cost is likely for carriers applying for compulsory insurance or financial guarantees relating to non war cover if they already have this type of insurance cover.

When issuing financial guarantees on behalf of the carrier, the insurance industry would incur some costs but it is assumed that these are likely to be recovered. The costs of producing these financial guarantees would vary depending on the provider. It is not possible to quantify with any degree of accuracy the potential costs to the industry of issuing financial guarantees. There are a number of variables (i.e. employee costs, overheads, actual production of the financial guarantee, etc), and costs will vary between providers. However, the providers should already have the procedures in place to issue the financial guarantees in respect of the Civil Liability Convention and the Bunkers Convention, so it is assumed that the administrative costs for insurance providers would not therefore be significant.

It is assumed that the cost of establishing an administrative agency to issue war/terrorism guarantees would be absorbed into the overall cost of the war/terrorism cover. Whilst no evidence on these costs is available and it has not been possible to monetise these costs in this impact assessment, the cost of producing financial guarantees is not expected to result in a significant cost to the carrier.

Consultees are invited to submit any additional evidence on the possible costs of producing financial guarantees, or any other administrative costs.

7.1.1.5.6. Monitoring & Enforcement

Shipowners would need to ensure that certificate(s) are available for examination at all times by Port State Control officers and other designated officials. However, this requirement would form part of the ships wider Port State Control commitments and would not result in any additional costs to the shipowner unless the ship is not in compliance with the requirements. Failure to provide the relevant paperwork would mean that the ship is liable to be detained and a shipowner would be deemed to have committed an offence if they were unable to provide evidence of compulsory insurance.

Whilst this will place a small amount of additional burden on Port State Control Officers, any additional burden would be limited to checking for the relevant certification during the course of other inspection activities. No new processes or procedures would be created and therefore it is assumed that there would be zero additional cost of monitoring compliance in respect of domestic seagoing passenger ships, over and above the cost of the existing Port State Control regime.

The establishment of sanctions that broadly mirror the UK's implementation of other maritime liability and compensation regimes enables an indicative assessment of the extent of the UK's enforcement regime in respect of the 2002 Protocol. Since October 2007, there have been 22 instances where the UK's Port State Control authorities have identified deficiencies with a civil liability for oil pollution damage certificate or a civil liability for bunker oil pollution damage certificate onboard a UK flagged ship. However, there were no detentions in such instances, and there have been no instances of summary convictions. The financial cost to the shipowner of having a ship detained is significant; therefore, the threat of detention is a sufficient deterrent.

The MCA consider the costs associated with the enforcement of a very low number of deficiencies per year to be insignificant. The management of such a low number of deficiencies would not alter the enforcement costs associated with the UK's Port State Control regime. Whilst it is possible that the identification of a deficiency could alter the risk profile of a ship, leading to a requirement to undertake more frequent inspections, it is assumed that such inspections are unlikely to result in any increase in enforcement costs because the risk profile of ships regularly fluctuates within the framework of the existing Port State Control regime. Therefore, no costs have been associated with this aspect of Option 1.

Consultees are invited to submit any additional evidence on these potential costs.

7.1.1.6. Summary of Monetised Costs

Description of cost	Estimated value
War/terrorism insurance cover	£36,000 per annum (from 2018 onwards)
Cost of applying for state certificates	£6,300 per annum (from 2018 onwards)
Total:	£42,300 per annum (from 2018 onwards)

The above table summarises the costs of Option 1 which it has been possible to monetise. In addition to these there are various non-monetised costs as outlined throughout section 7.1.

7.1.2. Costs of Option 1 associated with derogating obligations in respect of ships of EU Class A and B

As reported in section 6.5 of this impact assessment, the EU Regulation provides an opportunity for Member States to derogate their obligations in respect of ships of EU Class A and B until 31 December 2016 and 31 December 2018 respectively, and the option *not* to derogate these obligations was discounted on the basis that such an approach does not accord with the Government's principles of better regulation. Since under the 'do nothing' option (the option against which this option is being assessed) the derogations would not be taken up, there are additional costs of Option 1 associated specifically with derogating the obligations imposed by the Regulation.

These costs effectively correspond to the value of benefits which are directly associated with applying the Regulation to ships of EU Class A and B from 31 December 2012 as opposed to from 31 December 2016 and 31 December 2018 respectively. Under Option 1, these benefits would be forgone as a consequence of derogating the obligations and are therefore treated as costs which would be incurred under this policy option. For example, as a result of derogating the obligations, the maximum amount of compensation available, in principle, to passengers travelling on board EU Class A ships operating domestic seagoing voyages would remain at the level of 300,000 special drawing rights (SDR) between 31 December 2012 and 31 December 2016 (31 December 2018 in the case of EU Class B ships) instead of the higher amount of 400,000 SDR which would have been available, in principle, during this period had the derogation not been taken up.

It has not been possible to monetise the benefits associated with the Regulation, nor the portion which are directly attributable to the application of the Regulation to ships of EU Class A and B from 31 December 2012 as opposed to from 31 December 2016 and December 2018. Section 7.2.1 of this impact assessment provides a qualitative description of the benefits associated with the Regulation. As a result, it has not been possible to monetise the costs associated with derogating obligations in respect of ships of EU Class A and B.

7.2. Benefits of Option 1

The benefits of Option 1 can be separated into: (i) benefits associated with the Regulation *per se* under this policy option; and (ii) benefits associated with derogating the obligations in respect of ships of EU Class A and B under this policy option.

7.2.1. Benefits of Option 1 associated with the Regulation *per se*

The benefits associated with the Regulation *per se* under Option 1 are discussed below. It should be noted that any increase in the level of payments that are made to claimants as a result of increasing the limits of liability or the other changes discussed below would represent a transfer from business to claimants. Whilst this impact would be felt by insurance companies in the first instance, it is expected that any increased costs to insurance companies would be ultimately reflected in the level of premiums that are charged to the shipping industry. The costs of Option 1 associated with the Regulation *per se* are explained in detail in Section 7.1.1 of this impact assessment.

Table 15 (Summary of Athens related Benefits)

Provision / Aspect		Benefit	Beneficiary
Strict Liability		Claimants would not bear the burden of proving fault or neglect for shipping-type incidents;	Claimant / Passenger
Compulsory Insurance, including right of direct action against the insurer	Non-war cover	Insurance would help to ensure that claimants have access to adequate, prompt and effective compensation; insurance would also have benefits for businesses;	Claimant / Passenger / Business
	War/terrorism cover	Insurance would help to ensure that claimants have access to adequate, prompt and effective compensation in the event of incident occurring because of an act of war/terrorism; insurance would also have benefits for businesses;	Claimant / Passenger / Business
Limits of Liability	Death and Personal Injury	Increases in the amounts claimants could receive in compensation;	Claimant / Passenger
	Loss or damage to luggage and vehicles	Increases in the amounts claimants could receive in compensation;	Claimant / Passenger
Compensation in respect of mobility equipment or other specific equipment		New requirements which allow claimants to claim against items not covered in the baseline;	Claimant / Passenger
Advance payment		Initial sums of money available to claimants in the immediate aftermath of an incident;	Claimant / Passenger
Time bar Provisions		Claimants will have longer to lodge a claim against a carrier;	Claimant / Passenger

7.2.1.1. Benefits to claimants / passengers under Option 1

For domestic seagoing voyages involving the additional classes of ship which the EU Regulation would apply to under Option 1, Option 1 would ensure that increased levels of compensation are available to claimants in the event of an accident involving such ships in the seaward side of categorised waters. Application of the EU Regulation and the 2002 Protocol to the additional classes of ship would make it

easier for such claimants to obtain prompt and effective compensation for claims relating to the death of or personal injury to a passenger and damage to luggage or vehicles through:

- the application of higher limits of liability of the shipowner, for death and personal injury up to 400,000 SDR with a requirement on the shipowner to maintain insurance or other financial security up to 250,000 SDR;
- improved access to the available compensation through the application of strict liability of the shipowner (for shipping related incidents only);
- the right of direct action against the insurer up to the compulsory insurance level of 250,000 SDR;
- the application of higher limits of liability of the shipowner, for damage to or loss of luggage and vehicles up to a maximum of 5,625 SDR for luggage and 12,700 SDR for vehicles;
- compensation in the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility; and
- the advance payment of compensation for death or personal injury to cover immediate economic needs proportionate to damage suffered by the claimant.

Some of the benefits to claimants / passengers are discussed in more detail in subsequent sections.

7.2.1.2. Limits of liability – death and personal injury

Option 1 would increase the maximum amount of compensation that is available, in principle, to passengers who are travelling on ships operating on a domestic seagoing voyage (e.g. where the liability limit is increased from 300,000 SDR to 400,000 SDR, the maximum amount of compensation that is available would be increased by just under £100,000 per passenger). In the event of death or serious injury, this is the increase in the maximum amount which could be claimed. Therefore the increase in the maximum amount payable in the event of a casualty or fatality would be a direct benefit to claimants. It is not known what number of claims currently made each year would exceed the current limits of liability if they did not apply, so it is not possible to monetise these benefits to claimants at this stage. This information would give a clearer indication of the potential benefits to claimants of this aspect of Option 1. **Consultees are invited to submit any evidence that is available on the number of claims that are made each year, including what proportion would exceed the current limits of liability if they did not apply and the extent that such claims would exceed current limits.** As explained above, it should be noted that any benefits to claimants would represent a transfer from business to claimants.

Under the 2002 Protocol carriers are also liable for terrorism related incidents to a limit of 250,000 SDR per passenger, subject to an overall limit of 340 million SDR. While this might be considered to be the equivalent of a reduction in cover of 50,000 SDR per passenger (when compared to the national limit of liability in the UK which is currently 300,000 irrespective of the type of incident) the fact that the shipowner is strictly liable and must maintain insurance, and there is direct action against the insurer itself should ensure that claimants have access to adequate, prompt and effective insurance in the event of death and personal injury as a result of a war/terrorism related incident.

7.2.1.3. Limit of liability – loss of or damage to luggage and vehicles

Option 1 would increase the amount of compensation that is available, in principle, to claimants whose luggage or vehicle is lost or damaged in an incident at sea on a domestic seagoing voyage by a maximum of around £1,400 per person, per carriage for luggage and around £9,300 for vehicles. There is no data available on the number of incidents that occur per year which involve the loss of or damage to luggage or vehicles on domestic seagoing voyages, or the level of those claims. It is therefore not possible to make any estimate of the potential benefits to claimants of the increases in the limits of liability under Option 1. **Consultees are invited to submit any additional evidence that is available on the number of claims per year which involve the loss of or damage to luggage or vehicles.** As explained above, it should be noted that any benefits to claimants would represent a transfer from business to claimants.

7.2.1.4. *Strict liability*

The benefits of strict liability are considered to be as follows:

- Promotion of care – it protects the public from dangerous practises;
- Deterrent – offenders obey the law because they know prosecution leads to an automatic conviction;
- Easier enforcement – court time is saved when *mens rea*¹² need not be proved; and
- Difficulty of proving *mens rea* – *mens rea* can be difficult to prove so without strict liability guilty people may avoid conviction;

No evidence is currently available to enable the potential benefits of this aspect of Option 1 to be quantified at this stage. **Consultees are invited to submit evidence on the potential benefits of this aspect.**

7.2.1.5. *Direct-action against the insurer*

A direct-action lawsuit is brought directly against an insurance company for a wrong done by the insured. In a lawsuit that is not direct-action, a plaintiff brings the claim against the insured. To help the claimant avoid the extra cost, time and process required to obtain a judgment in a court of law, the 2002 Protocol enables action to be brought directly against the insurance company up to the 250,000 SDR compulsory insurance threshold. No evidence is currently available with regard to the additional cost and time a claimant must invest to pursue a shipowner where direct action against the insurer is not available. It has not therefore been possible to quantify this aspect of the potential benefits of Option 1. **Consultees are invited to submit evidence on the potential benefits of this aspect.**

7.2.1.6. *Compensation in respect of mobility equipment or other specific equipment*

The EU Regulation provides that should damage or loss occur of equipment used by a passenger of reduced mobility then the liability will be governed by provisions of the 2002 Protocol relating to the loss of or damage to cabin luggage. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident. The compensation paid will either be the replacement value or the repair costs depending on whether the equipment is lost or damaged.

The numbers of incidents, per year which result in claims for compensation in respect of mobility equipment, are not known. However, initial consultations with the industry suggest the number of incidents involving mobility equipment is small because the passenger normally retains possession of such equipment unlike the aviation industry where such equipment is usually stored in the hold of the aircraft. It has not been possible to monetise the additional costs of this aspect of Option 1 due to the limitations of the available evidence. **Consultees are invited to submit any additional evidence that is available on the likely number of claims per year in respect of mobility equipment or other specific equipment, and the likely value of these claims.**

7.2.1.7. *Advance payment*

The EU Regulation provides for the advance payment of compensation for death or personal injury to cover immediate needs and this payout should be proportionate to the damage suffered by the claimant. Any payment should be made by the carrier within 15 days of the identification of the claimant. There is a minimum payment of €21,000 in the event of death. The EU Regulation provides that payment does not mean that there is an acceptance of liability by the carrier but should the carrier prove to be liable under the EU Regulation or the 2002 Protocol then any advance payment would be offset against any eventual payment. Carriers are not required by the EU Regulation to have compulsory insurance to provide advance payment.

If it assumed that advance payment is only made after incidents where the carrier is liable then there would be no additional financial benefit of providing advance payment over and above the overall liability

¹² Mens rea is Latin for "guilty mind".

payable by the carrier. However, the advance payment is available to cover the immediate economic needs of an injured passenger or other beneficiaries as a result of an accident at sea. Any advance payment is therefore likely to have a wider positive impact than the obvious financial benefit it would bring at such a difficult time.

Due to the lack of available evidence on the number of claims per year, it is not possible to monetise this aspect of the potential benefits of Option 1. As this provision simply provides claimants with an advance which would be offset against any final claim, the total amount of compensation paid is not affected by this provision. However, as noted above, claimants would benefit from the immediate financial assistance that this provision would give them. **Consultees are invited to submit any additional evidence that is available on the potential benefits of this aspect.**

7.2.1.8. Time bar provisions

Claimants would have longer to lodge a claim against the carrier and the insurance provider. However, it is not known whether the numbers of claims that are submitted towards the end of the time limit are significant, and therefore whether this aspect of Option 1 would result in significant benefits. **Consultees are invited to submit any evidence that is available on the potential benefits of this aspect.**

7.2.1.9. Benefits to business of increased insurance coverage

There are a number of potential benefits to businesses that obtain additional insurance coverage. This includes a) the transfer of risk to the insurance company, which should be valued at the expected level of compensation that the business would receive in relation to the additional types of losses that would now be insured; b) potential administrative cost savings if the insurance company handles related claims; and c) potential benefits in terms of business recovery. No evidence on these potential benefits is currently available, so it has not been possible to estimate the scale of these potential benefits in this impact assessment. **Consultees are invited to submit any additional evidence that is available on these potential benefits.**

7.2.1.10 Simplification benefits of a uniform approach to liability

Option 1 would apply to all seagoing passenger ships on both international and domestic carriage, irrespective of size. Only ships that carry 12 or less passengers would not be required to have compulsory insurance. It is assumed that passengers would therefore experience a simplification benefit as their rights would be the same irrespective of the seagoing voyage they were taking. However, no evidence on these potential benefits is currently available, so it has not been possible to estimate the scale of these potential benefits in this impact assessment. **Consultees are invited to submit any additional evidence that is available on these potential benefits.**

7.2.2. Benefits of Option 1 associated with derogating obligations in respect of ships of EU Class A and B

As reported in section 6.5 of this impact assessment, the EU Regulation provides an opportunity for Member States to derogate their obligations in respect of ships of EU Class A and B until 31 December 2016 and 31 December 2018 respectively, and the option *not* to derogate these obligations was discounted on the basis that such an approach does not accord with the Government's principles of better regulation. Given that under the 'do nothing' option (the option against which this option is being assessed) the derogations would not be taken up and the EU Regulation would apply to these vessels from 31 December 2012, there are additional benefits of Option 1 associated specifically with derogating the obligations in respect of ships of EU Class A and B.

These benefits effectively correspond to the value of costs which are directly associated with applying the Regulation to ships of EU Class A and B from 31 December 2012 as opposed to from 31 December 2016 and 31 December 2018 respectively. Under Option 1, these specific costs would be avoided as a consequence of derogating the obligations and are therefore treated as benefits which would be incurred under this policy option.

Due to limitations in the evidence base it has not been possible to monetise all costs associated with the Regulation. Section 7.1.1 of this impact assessment assesses the costs associated with the Regulation

under Option 1, providing a qualitative description of costs for which it has not been possible to monetise. The only costs which it has been possible to monetise are those associated with (i) war/terrorism insurance cover; and (ii) applying for state certificates. Therefore, these are the only benefits associated with derogating obligations in respect of ships of EU Class A and B which it has been possible to monetise.

7.2.2.1. Benefits of avoided costs associated with war/terrorism insurance cover to ships of EU Class A and B

As a consequence of derogating obligations in respect of ships of EU Class A and B, the costs associated with war/terrorism insurance cover for EU Class A ships which would have been incurred between 31 December 2012 and 30 December 2016 under the 'do nothing' option would be avoided under Option 1. Similarly, the costs associated with war/terrorism insurance cover for EU Class B ships which would have been incurred between 31 December 2012 and 30 December 2018 under the 'do nothing' would be avoided under Option 1.

In order to estimate the costs associated with war/terrorism insurance cover under Option 1 the additional number of domestic seagoing passenger trips undertaken by ships that would be subject to the Regulation under the policy option was estimated. The detail of this approach is explained in section 7.1.1.2 of this impact assessment. On the basis of this approach it is estimated that approximately 1 million domestic sea going passenger trips per year are undertaken by ships of EU Class A and approximately 3 million domestic sea going passenger trips per year are undertaken by ships of EU Class B. In order to estimate the costs associated with war/terrorism insurance cover under Option 1, an estimate of the per passenger war/terrorism insurance costs was obtained. Using the same estimate of per passenger war/terrorism insurance costs used in section 7.1.1.2 of this impact assessment (£0.02), the estimated cost associated with war/terrorism insurance cover for EU Class A ships is approximately £20,000 (1 million x £0.02) per year. Under Option 1, this annual cost would be avoided between 31 December 2012 and 30 December 2016. The estimated cost associated with war/terrorism insurance cover for EU Class B ships is approximately £60,000 (3 million x £0.02) per year, and would be avoided between 31 December 2012 and 30 December 2018 under Option 1.

Combining the above estimates implies that the total annual benefit associated with avoiding war/terrorism insurance cover costs as a consequence of derogating obligations in respect of ships of EU Class A and B under Option 1 would be approximately £80,000 per year between 31 December 2012 and 30 December 2016 and approximately £60,000 per year between 31 December 2016 and 30 December 2018.

7.2.2.2. Benefits of avoided costs of applying for state certificates to ships of EU Class A and B

As a consequence of derogating obligations in respect of ships of EU Class A and B, the costs associated with applying for state certificates for EU Class A ships which would have been incurred between 31 December 2012 and 30 December 2016 under the 'do nothing' option would be avoided under Option 1. Similarly, the costs associated with applying for state certificates for EU Class B ships which would have been incurred between 31 December 2012 and 30 December 2018 under the 'do nothing' would be avoided under Option 1.

As reported in section 7.1.1.5.4 of this impact assessment, the cost of applying for a state certificate was estimated by the MCA at £31 per certificate. On the basis of 4 UK registered ships of EU Class A, the estimated cost of applying for state certificates for EU Class A ships is approximately £124 (4 x £31) per year. Under Option 1, this annual cost would be avoided between 31 December 2012 and 30 December 2016. On the basis of 27 UK registered ships of EU Class B, the estimated cost of applying for state certificates for EU Class B ships is approximately £837 (27 x £31) per year. Under Option 1, this annual cost would be avoided between 31 December 2012 and 30 December 2018.

Combining the above estimates implies that the total annual benefit associated with avoiding costs of applying for state certificates as a consequence of derogating obligations in respect of ships of EU Class A and B under Option 1 would be approximately £961 per year between 31 December 2012 and 30 December 2016 and approximately £837 per year between 31 December 2016 and 30 December 2018.

7.2.2.3. Summary of benefits associated with derogating obligations in respect of ships of EU Class A and B

Description of benefit	Estimated value	
	The period 31 December 2012 to 30 December 2016	The period 31 December 2016 to 30 December 2018
Avoided cost associated with war/terrorism insurance cover	£80,000 per annum	£60,000 per annum
Avoided cost of applying for state certificates	£961 per annum	£837 per annum
Total:	£80,961 per annum	£60,837 per annum

SECTION 8 - COSTS AND BENEFITS OF OPTION 2

Regarding the application of the EU Regulation to domestic seagoing voyages, Option 2 would apply the EU Regulation to passenger ships of EU Class A, B, C or D only. Under Option 2, the new UK legislation that would be introduced would therefore extend the requirements of the EU Regulation to passenger ships of EU Class C and D on domestic seagoing voyages.

Under Option 2, ships of EU Class A operating on domestic seagoing voyages would be required to comply with the EU Regulation from 31 December 2016, and ships of EU Class B, C and D operating on domestic seagoing voyages would be required to comply with the EU Regulation from 31 December 2018. This means that the new liability limits and other new requirements would apply to domestic seagoing voyages involving these vessels from these dates.

Therefore, the additional costs and benefits that have been identified under Option 1 would only apply in relation to passenger ships of EU Class C and D on domestic seagoing voyages, and carriers operating other domestic passenger ships would incur no additional costs and benefits under Option 2.

Under Option 2, the Government would derogate its obligations in respect of ships of EU Class A and B. As a consequence of this, the same costs and benefits identified under Option 1 which are associated specifically with derogating these obligations would apply under Option 2.

Option 2 would create a two-tiered approach. The EU classification system is used primarily for the design and construction of passenger ships. Whilst it is not a concept that is well known to passengers travelling by sea, there is an existing obligation for carriers to provide notice to passengers on their rights. Passengers should therefore, irrespective of the ship that they are travelling on, have access to information that defines their rights under the Athens Convention and the 2002 Protocol.

8.1. Costs of Option 2

Consultations with industry associations suggest that carriers operating domestic seagoing passenger ships already have insurance cover for non-war liabilities, even though there is no legal requirement for these carriers to have insurance. Therefore, it is assumed that there is unlikely to be a significant cost to such operators of obtaining the necessary non-war insurance cover.

However, as explained previously, it is considered that existing insurance policies are unlikely to provide sufficient cover for operators of domestic seagoing passenger ships in respect of war/terrorism. Option 2 would additionally require operators of EU Class C and D ships to take out separate insurance cover for war/terrorism even though it is assumed that the risk to such ships is less than domestic ships of EU Class A and B and ships on international journeys. Domestic ships of EU Class A and B and ships on international journeys are larger, have a greater capacity, operate on a more frequent basis and tend to have a prominent profile.

It is assumed that the costs per passenger per carriage under Option 2 would be the same as under Option 1, but that the number of trips affected would be lower as the EU Regulation would only additionally be applied to EU Class C and D ships on domestic seagoing voyages under Option 2. On

the basis of the same approach used to estimate costs under Option 1 (see Section 7.1.2 for a detailed explanation), it was estimated that in 2009 approximately 800,000 domestic seagoing passenger trips were completed by the additional vessel classes (i.e. EU Class C and D ships) that would be subject to the EU Regulation under Option 2. As per Option 1, it is assumed that this would not change during the appraisal period.

For the purposes of this impact assessment, the additional costs associated with war/terrorism insurance cover has therefore been estimated at around £16,000 per year from 2018. This estimate is sensitive to the various assumptions and uncertainties as previously set out in section 7.1.2.

On the basis that there are currently 32 EU Class C and D ships registered on the UK flag that would be required to apply for state certificates from 2018 under Option 2 and the assumption that this would not change during the appraisal period, this cost is estimated at around £1,000 per year from 2018 onwards.

Under Option 2, there would also be costs associated with derogating the obligations in respect of ships of EU Class A and B. These costs correspond to the value of benefits which are directly associated with applying the Regulation to ships of EU Class A and B from 31 December 2012 as opposed to from 31 December 2016 and 31 December 2018 respectively. For example, as a result of derogating the obligations, the maximum amount of compensation available, in principle, to passengers travelling on board EU Class A ships operating domestic seagoing voyages would remain at the level of 300,000 special drawing rights (SDR) between 31 December 2012 and 31 December 2016 (31 December 2018 in the case of EU Class B ships) instead of the higher amount of 400,000 SDR which would have been available, in principle, during this period had the derogation not been taken up. This would represent a cost under Option 2 associated specifically with derogating obligations. For the same reasons stated in section 7.1.2 of this impact assessment, it has not been possible to monetise these costs.

Consultees are invited to submit any additional evidence that is available on the additional costs of Option 2.

8.2. Benefits of Option 2

The additional benefits identified in Option 1 would only apply in relation to passenger ships of EU Class C and D on domestic seagoing voyages under Option 2. In particular, passengers travelling on board these vessels would benefit from the increased limits of liability for death and personal injury or loss of or damage to luggage, mobility equipment and vehicles, underpinned by a requirement to hold insurance, a right of direct action, strict rather than fault based liability, a longer time bar period and access to advance payments. However, there would be no change for passengers travelling on other passenger ships engaged domestic seagoing voyages; such passengers would continue to be protected by the Athens Convention.

Under Option 2, there would also be benefits associated with derogating the obligations in respect of ships of EU Class A and B. These benefits are the same as those which would apply under Option 1 (as set out in section 7.2.2 of this impact assessment) and are estimated at £80,961 per year between 31 December 2012 and 30 December 2016 and £60, 837 per year between 31 December and 30 December 2018.

Consultees are invited to submit any additional evidence that is available on the additional benefits of Option 2.

SECTION 9 - COSTS AND BENEFITS OF OPTION 3

Regarding the application of the EU Regulation to domestic seagoing voyages, Option 3 would apply the EU Regulation to passenger ships of EU Class A or B only, making use of the available derogations so that the EU Regulation applies from 31st December 2016 and 31st December 2018 for Class A and B ships respectively. Under Option 3, none of the additional costs and benefits identified for Option 1 would apply as carriers operating passenger ships other than EU Class A or B on domestic seagoing voyages would continue to be bound by the existing domestic Regulations that apply the Athens Convention.

However, under Option 3 there would be costs and benefits associated specifically with derogating the obligations in respect of ships of EU Class A and B. These costs and benefits are the same as those which would apply under Options 1 and 2. The value of these benefits (as set out in section 7.2.2 of this

impact assessment) is estimated at £80,961 per year between 31 December 2012 and 30 December 2016 and £60,837 per year between 31 December 2016 and 30 December 2018. It has not been possible to monetise the costs associated with derogating the obligations in respect of ships of EU Class A and B for the same reasons stated in section 7.1.2 of this impact assessment. These costs correspond to the value of benefits which are directly associated with applying the Regulation to ships of EU Class A and B from 31 December 2012 as opposed to from 31 December 2016 and 31 December 2018 respectively. For example, as a result of derogating the obligations, the maximum amount of compensation available, in principle, to passengers travelling on board EU Class A ships operating domestic seagoing voyages would remain at the level of 300,000 special drawing rights (SDR) between 31 December 2012 and 31 December 2016 (31 December 2018 in the case of EU Class B ships) instead of the higher amount of 400,000 SDR which would have been available, in principle, during this period had the derogation not been taken up.

Option 3 would create a two-tiered approach. The EU classification system is used primarily for the design and construction of passenger ships. Whilst it is not a concept that is well known to passengers travelling by sea, there is an existing obligation for carriers to provide notice to passengers on their rights. Passengers should therefore, irrespective of the ship that they are travelling on, have access to information that defines their rights under either the Athens Convention or the 2002 Protocol.

SECTION 10 – SUMMARY AND PREFERRED OPTION

EU Regulation 392/2009 (which gives effect to the 2002 Protocol at EU level) will apply in the UK from 31st December 2012 and will establish an enhanced regime for liability of carriers of passengers by sea in the event of an accident across the whole of the EU. The EU Regulation will make it easier for claimants to obtain prompt and effective compensation for claims relating to the death of or personal injury to a passenger or damage to luggage or vehicles.

With respect to domestic seagoing passenger voyages, Option 1 would benefit passengers by ensuring that passengers travelling onboard any ship on a domestic seagoing voyage would have access to the same rights and be afforded the same protection irrespective of the class of the ship; it would however do so at a cost. Of the costs that it has been possible to monetise, it is estimated that the most significant cost relates to the need to have war/terrorism insurance cover.

Option 1 is not considered to be the preferred option because it would place an additional cost burden on the operators of all domestic seagoing passenger ships, with regard to, in particular, the costs associated with war/terrorism insurance cover. The majority of shipowners already voluntarily have insurance in place to cover non-war risks. Requiring all seagoing passenger ships to have war/terrorism insurance goes beyond the minimum that is required by the EU Regulation. It is assumed that the risk of a shipping incident e.g. a capsizing or collision is greater but the industry have advised that the majority of shipowners voluntarily take out appropriate insurance cover.

Option 2 (which would apply the EU Regulation to domestic seagoing passenger ships of EU Class A, B, C and D) and Option 3 (which would apply the EU Regulation to EU Class A and B only) would offer the benefits that Option 1 offers but to fewer passengers. In applying Option 3, the UK would be implementing the mandatory provisions of the EU Regulation only.

Option 2 is not considered to be the most appropriate option because there is no requirement to apply the EU Regulation to Class C and D ships on domestic seagoing voyages. Whilst the Commission is considering producing a proposal, it is not considered appropriate to try and predict the outcome of any such negotiation.

Option 3 is considered to be the most appropriate option. It balances the need to protect passengers travelling onboard Class A or B ships whilst maintaining the existing legislation relating to the Athens Convention and therefore minimising the potential cost implications for small seagoing passenger ships engaged on domestic voyages.

Under Option 3, the Athens Convention would continue to apply in the UK to those domestic passenger ships that would not be required to apply the 2002 Protocol, which would ensure that all passengers travelling onboard domestic seagoing passenger ships would have access to some protection.

For these reasons, Option 3 is the only option that satisfies the policy objectives identified in this impact assessment. It is also in keeping with better regulations principles because it adopts a minimalist approach to implementation by making use of available derogations.

11. SPECIFIC IMPACT TESTS

11.1. Statutory Equality Duties

The application of the EU Regulation will have a *positive* impact on the different needs, experiences, issues or priorities of older and disabled persons. Whilst there will be a positive impact under each policy Option; the impact would be greater if it applies to a larger number of passengers. Article 4 of the EU Regulation requires carriers and terminal operators to provide compensation in respect of mobility equipment in the event of loss of, or damage to such equipment used by a passenger with reduced mobility. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs. There is no impact on any of the Department's other statutory equality duties. See Annex 2 for a copy of the equality impact assessment screening proforma.

11.2. Competition Assessment

Implementation of Options 1 and 2 would have some impact on participants in the affected UK markets (in the shipping and insurance industries).

Shipping industry

UK-registered passenger shipowners would face increased liabilities, even in the absence of fault, for incidents involving the death of, or personal injury to passengers, which may result in the need to take out increased levels of insurance cover. It is possible that, if there is an increase in premiums, they may be absorbed by carriers, or any increase in premiums may be passed on to passengers by way of increased fares.

Whilst most, if not all carriers operating international passenger ships will already have insurance to cover their war and terrorism risk, carriers operating domestic passenger ships may be less likely to have such cover.

To the extent that there is competition between the shipping and aviation sectors on affected routes, it is considered that there is only a small possibility that any obligation may potentially have an impact on competition between the shipping and aviation sectors. Any impact would be mitigated to some extent by the fact that all airplanes are already required to have insurance cover for damage originating from an act of terrorism or war (see section 2).

Furthermore, it is considered that there is only a very small possibility that increased premiums could potentially result in some providers on specific routes leaving the market and so reducing competition on those routes. This would, of course, depend on the scale of the increase and, if firms are unable to absorb the costs, the willingness of passengers to pay increased fares.

However, Options 2 and 3 would create a two-tiered approach to domestic seagoing passenger services in the UK. Some carriers operating domestic passenger ships would be required to have compulsory insurance and have a maximum level of liability in line with the 2002 Protocol whilst other domestic carriers would not. For the past 25 years, all carriers operating passenger seagoing vessels in the UK have had identical obligations. A two-tiered approach might potentially benefit some operators more than others; however, based on the available evidence, it is considered that it is unlikely that an EU Class A or B ship will be in direct competition with an EU Class C or D ship.

Insurance industry

There are 13 clubs in the IGP&I Clubs that insure almost half of the world's passenger ships. Five of them are based in the UK. *The world merchant fleet in 2010, Statistics from Equasis* indicates that the P&I Clubs insure approximately 46% of world's passenger ships and approximately 83% of the overall world's passenger ship tonnage. The IGP&I Clubs are mutual non profit making organisations operated by the shipowners themselves and are unlikely to have problems with competition irrespective of the preferred Option.

Those ships which are not entered with the IGP&I Clubs are likely to be entered with premium based insurers where the level cover required will correlate closely with the premiums charged. The Admiralty and Marine Law Guide (<http://www.admiraltylawguide.com/insurance.html#IN>) list 60 insurers, brokers and associations worldwide in their marine insurance section.

The requirement under the 2002 Protocol for the shipowner to maintain compulsory insurance not less than 250,000 SDR per passenger and the need for Member States to attest that such security is in place

before issuing State certification against certain criteria (e.g. a high credit rating) are designed to ensure the robustness and effectiveness of insurance products. Given the high limits of liability, there is a possibility that the smaller premium based insurers will not be able to compete with the IGP&I Clubs. Consultations with the industry suggest that while the majority of large passenger ships insure themselves with the IGP&I Clubs, there is a tendency for smaller ships to insurer with premium based insurers. It is considered that the impact on competition between the IGP&I Clubs and premium based insurers would be less if the 2002 Protocol does not apply to all domestic passenger ships. Option 3 would therefore have the smallest impact on competition in the insurance industry.

Consultees are invited to submit any additional evidence on the impacts of Option 1, Option 2 and Option 3 on competition.

11.3. Small Firms Impact Assessment

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 2002 Protocol only requires carriers to have compulsory insurance if the ship is licensed to carry more than 12 passengers. The 2002 Protocol and the EU Regulation lays 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 the regime on small firms.

The adoption of Option 3 as the preferred policy approach, making use of all available derogations, means that the UK is seeking to apply the EU Regulation in accordance with its own better regulation principles. The impact of the EU Regulation on small firms would be reduced to the maximum extent possible.

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

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 Marsh Ltd 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.

Consultees are invited to submit any additional evidence on the impacts of Option 1, Option 2 and Option 3 on small firms.

11.4 Health and Well-being Impact Assessment

Having in place a robust and effective liability regime that ensures passengers are able to obtain adequate and prompt compensation in the event of an accident at sea that results in personal injury would have a positive impact on the health and well-being of the individual. The greater the coverage of the EU Regulation and the 2002 Protocol, the greater the number of passengers that would be able to access benefits.

The provision of compensation should assist the individual recover from the event by compensating for any lifestyle variables which have either been compromised as a result of the incident (e.g. the level of physical activity that they are able to undertake) or have derived from the incident itself (e.g. stress and trauma).

As explained previously, the EU Regulation provides for the advance payment of compensation for death or personal injury to cover immediate economic needs and this payout should be proportionate to damage suffered by the claimant. Any payment should be made by the carrier within 15 days of the identification of the claimant. There is a minimum payment of €21,000 in the event of death. This should also have a positive impact on the health and well being of claimants.

A full health impact assessment is not considered necessary because the 2002 Protocol will have a positive impact on the health and well being of individuals and will not have a significant impact on human health nor will it create a significant demand on health or social care services. Indeed the

establishment of a compensation and liability regime should give further encouragement to owners to maintain a safe passenger ship because of the high limits of liabilities.

The application of the EU Regulation to ships of EU Class A and B would have some benefit on the health and well being of passengers that travel onboard these ships; however, it would not create as much of a benefit as Options 1 or 2.

11.5 Justice System Impact Assessment

The penalties and enforcement associated with the Athens regime will mirror the well established, comprehensive and coherent structure of maritime regulatory enforcement which already operates in the UK and is well understood within the maritime community. We do not anticipate that the new offences created will generate much, if any, additional activity in the Courts. They are intended as a deterrent and are only likely to be used in extreme cases.

Since October 2007, there have been 22 instances where the UK's Port State Control authorities have identified deficiencies with a civil liability for oil pollution damage certificate or a civil liability for bunker oil pollution damage certificate onboard a UK flagged ship. There were no detentions in such instances. There have been no instances of summary convictions. The financial cost to the shipowner of having a ship detained is significant.

A justice system impact assessment will be submitted separately to the Ministry of Justice through the Criminal Offences Gateway.

The greater the coverage of the EU Regulation and the 2002 Protocol, the greater the potential there is for there to be an impact on the justice system. It is therefore considered that the EU Regulation would have less impact on the justice system under Option 3 than Options 1 or 2.

12. One-In, One-Out (OIOO)

The EU Regulation applies the requirements of the 2002 Protocol to ships on international seagoing voyages and ships of EU Class A and B on domestic seagoing voyages. The EU Regulation contains a derogation which allows Member States to delay the application of the EU Regulation to ships of EU Class A and B on domestic seagoing voyages. All of the policy options presented take advantage of that derogation. Therefore, the costs and benefits to business associated specifically with application of EU Regulation to EU Class A and B ships on domestic seagoing voyages under Options 1, 2 and 3 would not be within scope of OIOO. This includes the benefits identified in this impact assessment which are associated with derogating obligations in respect of ships of EU Class A and B.

However, Options 1 and 2 would apply the EU Regulation to ships on domestic seagoing voyages other than EU Class A and B, which would represent gold-plating and result in additional costs and benefits to business that are within the scope of OIOO. Therefore, the summary sheets for Option 1 and Option 2 present the best estimates of the direct costs and benefits to business that result from this gold-plating under Option 1 and Option 2 (i.e. only those costs and benefits that are within scope of OIOO). On the basis of the estimates of the monetised costs presented in this impact assessment, it is estimated that Option 1 would result in an IN of £0.02 million per year from 2018 and Option 2 would result in an IN of £0.01 million per year from 2018 (both estimates are stated in equivalent annual terms).

Under Option 3, whilst the Athens Convention would continue to be applied to ships other than EU Class A and B on domestic seagoing voyages, there would be no changes to the existing UK implementing requirements that are applied to these voyages (e.g. carriers whose principal place of business is in the UK would continue to be subject to a liability limit of up to 300,000 SDR per passenger per carriage). Therefore, this would not result in any additional costs to business compared to the status quo. As this proposal is of European origin and Option 3 takes up all available derogations, it is considered that Option 3 is not within the scope of OIOO. Accordingly, the business assessment included in the summary sheet for Option 3 shows the OIOO assessment as 'N/A', and the summary sheet for Option 3 presents the best estimates of the full direct costs and benefits to business of Option 3 (even though none of them are in scope of OIOO).

Consultees are invited to submit any available evidence that demonstrates that, compared to the status quo, there would be any additional costs or benefits to other ships on domestic voyages that would continue to be subject to the Athens Convention under Option 3.

Consultees are also invited to submit any available evidence on the additional costs and benefits, compared to the status quo, that would arise if the Athens Convention would not continue to be applied to voyages that are outside the scope of the EU Regulation under Option 3.

Annex I: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

A review clause will be used to impose a statutory duty to carry out a review of the relevant Regulations five years after the Regulations come into force, and every five years thereafter.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The principal focus of the review will be to identify areas where implementation and enforcement could be improved to reduce burdens on UK businesses, learning from the practical experience both in the UK and in other EU States. The review will need to ascertain whether the application of the EU Regulation to domestic seagoing voyages is appropriate.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

An in-depth evaluation will be undertaken, taking into account incident and claims data from the shipping insurance sector in the five years after the UK legislation came into force. A scan of stakeholders views will also be undertaken. The rationale behind such an approach was chosen because it is the number and severity of incidents which determine the effectiveness of the regime.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position against which any review can be measured would be the Athens Convention as implemented in the UK, supplemented by the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 and the Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

An in-depth evaluation and examination of stakeholders views confirm that a system is in place to enable all potential claimants to continue to obtain full compensation in the event of an accident at sea.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

The IGP&I Clubs hold sufficient data relating to claims made against the insurer in respect of the death of or injury to passengers at sea for a future policy review. Data on the number of incidents which take place is available from a variety of sources including the MAIB and EMSA.

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

N/A

Annex II: EqIA Screening Proforma

Name of the function, policy or strategy: Application of EU Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accidents and ratification of the Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974. Current or Proposed: Proposed								
Person completing the assessment: Scott Parnell								
Date of assessment: 7 April 2011								
Purpose of the function, policy or strategy: The policy objective is to ensure that, in the UK, claims for death or personal injury, and damage to luggage, arising from the carriage by sea of fare paying passengers on sea going vessels are met on an adequate, prompt and effective basis.								
Questions - Indicate Yes, No or Not Known for each group	Age	Disability	Gender	Ethnicity and race	Religion or Belief	Sexual Orientation	Transgender	Pregnancy and Maternity
Is there any indication or evidence that different groups have different needs, experiences, issues or priorities in relation to the particular policy?	Yes	Yes	No	No	No	No	No	No
Is there potential for, or evidence that, this policy may adversely affect equality of opportunity for all and may harm good relations between different groups?	No	No	No	No	No	No	No	No
Is there any potential for, or evidence that, any part of the proposed policy could discriminate, directly or indirectly? (Consider those who implement it on a day to day basis)?	No	No	No	No	No	No	No	No
Is there any stakeholder (staff, public, unions) concern in the policy area about actual, perceived or potential discrimination against a particular group(s)?	No	No	No	No	No	No	No	No
Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with other government departments or the wider community?	No	No	No	No	No	No	No	No
Is there any evidence or indication of higher or lower uptake by different groups?	No	No	No	No	No	No	No	No
Are there physical or social barriers to participation/access (e.g. language, format, physical access/proximity)?	No	No	No	No	No	No	No	No

If you have answered "no" to all the questions, an EqIA is not required.

If your answer is "yes" or "not known" to any of these questions then consider the proportionality aspect in terms of providing a lower standard of service or offering a service on different terms than you would to other people. After considering the proportionality aspects you will need to decide whether an Initial Equality Impact Assessment is needed.

Annex III – Preparation of the Impact Assessment

The evidence base was prepared in consultation with Department for Transport legal advisers, economists and statisticians. Informal discussions have also been held with the Association of Personal Injury Lawyers (APIL), the Chamber of Shipping (CoS), the IGP&I, MAIB, the MCA and the Passenger Shipping Association (PSA) in order to establish:

- The number of passengers travelling by sea;
- The number of UK registered passenger ships;
- A list of major incidents involving passenger ships occurring around the world;
- The number of accidents and injuries to passengers onboard UK ships or occurring in UK waters; and
- Passenger ship insurance costs.

The evidence base for this Impact Assessment is based on the EU Regulation, the European Commission's Impact Assessment (*SEC (2005) 1516*, dated 23.11.2005), and informal discussions with stakeholders and other Member States. However, the European Commission's Impact Assessment contains very little data, and what data is used is now several years old.

Explanation of changes made to the impact assessment in response to the assessment of the Regulatory Policy Committee

The Regulatory Policy Committee (RPC) reviews and comments on all impact assessments supporting new regulatory proposals prior to their submission to the Reducing Regulation Committee (RRC). The RPC assessed this impact assessment as 'fit for purpose'. However, the RPC also highlighted areas in which this impact assessment could be improved, and this section explains the changes that were made in order to take account of the RPC's comments.

The RPC's comments highlighted the need to discuss in more detail the impacts of the increased limits to liability which the EU Regulation would bring into force. To this end, additional explanation has been added to the impact assessment to explain that any increase in the level of payments that are made to claimants as a result of increasing the limits of liability would represent a transfer from business to claimants; and whilst this impact would be felt by insurance companies in the first instance, it is expected that any increased costs to insurance companies would be ultimately reflected in the level of premiums that are charged to the shipping industry.

The RPC's comments also highlighted the need to explain more clearly when the increase in limits to liability would come into effect and the impacts of taking up the derogation. To this end, additional explanation has been added to various places within the impact assessment stating clearly when, under each of the policy options considered, the proposed changes would come into effect (including where the date of entry differs for different types of vessel), and additional explanation of the impacts of taking up the derogation has been added.

In line with the RPC's recommendation, the One-in, One-out (OIOO) assessment for Option 3 has been changed from 'zero net cost to business' to 'out of scope of OIOO'. The relevant sections of the impact assessment have been updated accordingly.

Annex IV – References

No.	Legislation or publication
1	The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974; http://www.admiraltylawguide.com/conven/passengers1974.html
2	The Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987; http://www.legislation.gov.uk/ukSI/1987/670/contents/made
3	The Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998; http://www.legislation.gov.uk/ukSI/1998/2917/contents/made
4	The Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998; http://www.legislation.gov.uk/ukSI/1998/1258/contents/made
5	The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974; http://folk.uio.no/erikro/WWW/corrgr/prot.pdf
6	EU Regulation No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0024:0046:EN:PDF
7	Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0018:19980604:EN:PDF
8	Stopford, M. (2009) "Maritime Economics", 3 rd Edition

