
Passenger Ships: Implementation of Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents

Notice to all ship owners, operators, managers, masters and insurers of passenger ships

This Marine Information Note expires on 31 March 2014

Summary

Regulation (EC) 392/2009 (“EU Regulation”) introduces a new regime relating to liability and insurance for the carriage of passengers by sea. The EU Regulation will be implemented in the UK by the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 and will apply the provisions of the Athens Convention (as amended by the 2002 Protocol). It will enter into force on 31 December 2012 in all EU / EEA Member States.

This means that vessels licensed to carry more than 12 passengers will need to have a certificate issued by MCA attesting that appropriate insurance is in place to meet the requirements of the EU Regulation.

This Marine Information Note provides information that should help to ensure that UK-flagged passenger vessels and non-EU flagged passenger vessels that operate in UK waters and which use UK and other EU/EEA ports and terminals are issued with the necessary certificate ahead of 31 December 2012.

1. Introduction

1.1 The EU Regulation creates an EU-wide regime relating to liability and insurance for the carriage of passengers by sea. The EU Regulation reproduces relevant provisions of the Athens Convention relating to the Carriage of Passengers and the Luggage by Sea, 1974, as amended by the Protocol of 2002 and the International Maritime Organization’s Reservation and Guidelines for the implementation of the Athens Convention which were adopted by the Legal Committee of the IMO on 19 October 2006.

1.2 The 2002 Protocol enhances the existing 1974 Convention by introducing the concept of strict liability in respect of claims for passenger death and injury in relation to claims of up to 250,000 Special Drawing Right (SDRs). From 31 December 2012 the limits of liability for death

and personal injury will be increased to 400,000 SDR¹ per passenger as a result of a shipping-related incident.

1.3 Performing carriers operating passenger ships under the jurisdiction of the EU and EEA member States will also be required to maintain insurance to cover liability for death and personal injury to passengers. The limit of this insurance must not be less than 250,000 SDR per passenger.

1.4 The Protocol also introduces the right of direct action against the insurer and the EU Regulation includes specific provisions for the payment of claims up to a defined limit in cases of death or injury, and compensation for damage to mobility equipment. Furthermore, the 2002 Protocol also introduces a requirement for carriers to have insurance cover for war and terrorism liabilities.

2. Scope of the EU Regulation

2.1 The EU Regulation will apply to any international carriage where:

- (a) the vessel is registered in an EU or EEA Member State ; or
- (b) the contract of carriage is made in an EU or EEA Member State, or
- (c) the place of departure, or destination, according to the contract of carriage, is in an EU or EEA Member State.

The EU Regulation will apply also to carriage of passengers within the UK:

- from 31 December 2016 onboard ships of EU Class A; and
- from 31 December 2018 for the domestic carriage of passengers onboard ships of EU Class B.

2.2 The Athens Convention, (as amended by the 2002 Protocol) will:

- Introduce increased maximum liability limits on carriers (Up to 400,000 SDR per passenger, per carriage)
- Require the carrier to provide evidence of insurance cover of not less than 250,000 SDR per passenger;
- Require the insurance cover to be verified by a certificate issued by a State Party (i.e. the MCA in the UK);
- Allow a claim for compensation to be brought directly against the insurer up to 250,000 SDR; and
- Change the time bar provisions so that any action for damages arising out of the death of, or personal injury to a passenger, or for lost or damage to luggage and vehicles is time-barred after a period of two years;

2.3 The EU Regulation will be implemented in the United Kingdom by the proposed Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012. These have been the subject of a public consultation exercise carried out by the Department for Transport and this Marine Information Note deals with the UK's implementation of the EU Regulation following that consultation exercise.

¹ SDR - Special Drawing Rate (or Unit of Account) - is an international reserve asset created by the International Monetary Fund (IMF) in 1969 to supplement its member countries' official reserve. At time of publication 1 SDR was worth around £0.97 (\$1.50)

3. Insurance Certification

3.1 Owners of passenger ships seeking to obtain an insurance certificate from the MCA in the UK will be required to provide evidence of their third party liability insurance cover. The scope and amount of cover must be equal to that described in article 4*bis* of the Convention as amended by the 2002 Protocol and the provisions of the IMO Guidelines on the implementation of the Athens Convention.

3.2 Insurance Certificates carried on board ships registered in an EU or EEA Member State will be recognised in the UK for Port State Control purposes if they are issued by, or under, the Authority of the Government of that EU or EEA Country. Certificates carried on board ships registered in non-EU States which operate in EU waters and which use EU ports and terminals, will be recognised in the United Kingdom if issued by, or under, the authority of the Government of an EU or EEA Member State. When the 2002 Protocol enters into force internationally, passenger ships flagged to non-EU State shipping registers that are operating in EU waters will continue to require insurance certification which must be obtained either from an EU or EEA Member State or an Athens Convention Country that has acceded to the 2002 Protocol.

3.3 The MCA will issue certificates for UK-flagged vessels attesting that appropriate insurance is in place. The MCA may also issue certificates to non-UK vessels, provided that the MCA are satisfied that the insurance will cover the liabilities. Such certificates will be issued according to the commencement and expiry date stipulated on the blue card or financial guarantee provided by the insurer or other provider of financial security. Under no circumstances will certificates be issued for periods greater than 12 months commencing at any point in the calendar year. The commencement and expiry date of both war and non-war insurance cover required for an individual vessel should be identical.

3.4 Shipowners are strongly encouraged to approach the MCA in good time to ensure that applications can be processed in a timely manner. Applications will be accepted following publication of this Marine Information Note.

3.5 Noting that the insurance year for ships entered in the 13 P&I Associations comprising the International Group of P&I Clubs normally runs from 20 February, the MCA is prepared to accept requests for two certificates covering the periods 31 December 2012 to 20 February 2013, and 20 February 2013 to 20 February 2014 provided that insurance cover can be arranged with individual insurers and the blue cards for both periods issued accordingly (for both war and non-war components). The cost of each certificate will be £31 to which must be added additional courier costs of £25 per application where this service is requested. Further information and requests for application forms should be made through the contact details provided below.

More Information

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