

4 April 2012

Dear Consultee,

**Consultation on the implementation of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (the “Insurance Directive”).**

This consultation letter seeks views on the Department for Transport’s (DfT) draft Statutory Instrument (the “Regulations”) at Annex A that implements the Insurance Directive at Annex B into UK law.

Under the Insurance Directive, owners of seagoing ships flying the flag of an EU/EEA State shipping registry, and other seagoing ships entering a port in an EU/EEA State (including non-EU ships), of 300 gross tonnage and above are required to maintain insurance or other financial security to cover the vast majority of third party maritime claims up to the limits of liability that are established by the International Convention on Limitation of Liability for Maritime Claims 1976 (the “LLMC 76”), as amended by the 1996 Protocol to the LLMC 76 (the “LLMC 96”). The Insurance Directive entered into force across the EU on 1 January 2012.

Please tell us your views on the issues which affect you or which you wish to comment on. We would especially welcome your feedback on the questions highlighted in bold below covering the proposed approach for determining what constitutes a maritime claim (in Section 2) and other effective forms of insurance (in Section 3).

We would also welcome your feedback on any of the assumptions made, estimates presented, or evidence used in the Impact Assessment at Annex C. In particular, we would welcome any new evidence that you can provide on the costs and benefits of the draft Regulations in order to strengthen and improve our evidence base (see Section 5).

Since this consultation is addressed to the insurance and shipping industries (rather than to the general public) due to the specialised nature of the subject matter, the Minister has agreed to a consultation period of 6 weeks which closes on **16 May 2012**.

## **1. Executive Summary**

Under the Regulations, shipowners are to be required to maintain insurance or other

financial security to cover the vast majority of third party maritime claims up to the limits established by the LLMC 96 in respect of:

- (a) all UK registered seagoing ships of 300gt and above wherever they may be and;
- (b) all non-UK registered seagoing ships of 300gt and above that call at UK ports.

For these purposes, a “seagoing ship” is to be taken to mean a ship of any class that is issued with a load line certificate by, or on behalf of, the MCA certifying that it is “seagoing” for the purposes of operating outside of categorised waters as defined in Merchant Shipping Notice (MSN) 1827 (M).

It has not been possible to use the ‘copy out’ approach to transpose the definition of “insurance” in the Insurance Directive because the wording is such that any offences created for non-compliance would lack precision. The definition of “insurance” has therefore been incorporated by reference and more specific detail is given on what is meant by a ‘maritime claim’ in the Regulations, which is explained in more detail in Section 2.

The existence of any insurance is to be proved by means of a certificate issued by the insurance provider being carried on board the ship. For these purposes, an International Group of Protection and Indemnity Clubs certificate of entry would be acceptable. However, where a shipowner intends to rely on a form of insurance other than a contract of insurance provided by an insurance provider, the shipowner must obtain prior written approval to the arrangements from the Secretary of State for Transport prior to the ship entering UK waters, and a copy of this consent must then be carried on board the ship. Section 3 provides further details as to what is proposed for these purposes, and how the approval process is intended to work in practice.

The Secretary of State will refuse to allow a ship to enter a UK port where that ship has been issued with an expulsion order by an EU/EEA State for not having insurance. A ship may also be detained if it attempts to leave a UK port after having been found to have no insurance.

Details of the proposed offences and penalties for non-compliance with the provisions of the Regulations are summarised in Section 4. These remain subject to the agreement of the Secretary of State for Justice.

## **2. Maritime Claims**

The term “maritime claim” is not defined in the Insurance Directive. However, it is understood that the Insurance Directive was only ever intended to make mandatory the current shipping industry standard of having insurance which covers the vast majority of maritime claims subject to limitation under the LLMC 96 - not every conceivable maritime claim. In practice, this would mean to the level that is currently provided as standard by the Protection and Indemnity (P&I) Clubs in order to cover:

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to

navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting there from;

- (b) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (c) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such a ship;
- (d) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (e) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss of which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

In the addition, the insurance must cover claims:

- in respect of loss resulting from delay in the carriage by sea of cargo, but only where the provisions of the Hague Visby rules are incorporated into the contract for the carriage of goods and include delay in the carriage by sea of cargo; and
- in respect of loss resulting from delay in the carriage by sea of passengers or their luggage, but only where:
  - (i) consequent upon an accident involving a collision, stranding, explosion, fire or other cause affecting the physical condition of the ship so as to render it incapable of safe navigation to the intended destination of the passenger and their luggage; or
  - (ii) any other incident involving a threat of the life, health or safety of passengers.

These proposals are not intended to affect the way in which a shipowner's limit of liability is calculated under the LLMC 96. So the total limit of liability, and the levels of compensation payable, will remain unchanged.

By implementing the Insurance Directive in this way, we will be ensuring that the Insurance Directive does not impose any additional costs to the vast majority of UK shipowners because the third party insurance already taken out as standard cover, either on a voluntary basis or in order to comply with other international Conventions, would satisfy these requirements. This approach is also consistent with the way in which other EU Member States are proposing to implement it.

***Do you agree that the UK's proposed approach deals with maritime claims in respect of loss resulting from delay in the most appropriate way?***

### 3. Other effective forms of insurance

In addition to the normal types of indemnity insurance, the Insurance Directive provides for other effective forms of insurance, including proved self insurance, and financial security offering similar conditions of cover. However, it is left to individual Member States to determine the criteria upon which these other effective forms of insurance are to be accepted.

In order to provide a level of financial protection for individual claimants in the event of a shipowner experiencing financial problems, we are proposing that any shipowner who wants to rely on a form of insurance other than a contract of insurance provided by an insurance provider must meet the following criteria:

- the shipowner must obtain prior written approval to the arrangements from the Secretary of State for Transport. Any request for approval will have to be submitted to the DfT no later than 10 working days before the ship's intended entry into UK waters;
- for self insurance purposes, a shipowner must also produce a bank guarantee to an amount at least equal to the exposure / liability of the ship under the LLMC 96 limits as proof that the shipowner can meet his / her liabilities in this respect. This ability to self insure will not apply for the purposes of meeting the exposure / liabilities placed on shipowners under any other International Convention, EU or domestic regulations where these are in force or due to enter into force shortly in the UK – including those specified in section 3(3) of the draft Regulations as follows:
  - > The International Convention on Civil Liability for Oil Pollution Damage, 1992;
  - > The International Convention on Civil Liability for Bunker Oil Pollution, 2001;
  - > The Nairobi International convention on the Removal of Wrecks, 2007;
  - > Regulation (EC) No 329/2009 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; and
  - > The Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998.
- Any written approval issued on behalf of the Secretary of State for Transport must be carried on board the ship.

***Do you agree with the UK's proposed approach on other effective forms of insurance? Consultees are also invited to submit evidence of examples of other forms of proven self insurance.***

### 4. Enforcement, offences and penalties

The ability to detain a ship if someone attempts to navigate it out of a port in contravention of the insurance requirements is not considered to be sufficient on its own to act as a deterrent – not least because an uninsured ship could be deliberately abandoned in port. So we consider that there is a need to incorporate some criminal offences and penalties to ensure the successful implementation and application of the Regulations.

Subject to the agreement of the Secretary of State for Justice, it is proposed that the shipowner will be guilty of an offence if the ship enters or leaves a port without insurance, or someone attempts to navigate the ship into or out of a port in contravention of the requirements. A shipowner guilty of such an offence will be liable (i) on summary conviction, to a fine not exceeding the statutory maximum, and (ii) on conviction on indictment to a fine.

The master of a ship will also be guilty of an offence if he fails to produce the certificate issued by the insurance provider, or in the case of any other financial security, the approval by the Secretary of State for Transport. A master guilty of such an offence will be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

If a ship attempts to leave port before a 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.

## **5. Summary of requests for information set out in the Impact Assessment**

This consultation document should be read in conjunction with the Impact Assessment (IA) at Annex C which provides detailed consideration of the implementation of the Insurance Directive. However, due to the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits that have been identified in the IA. So the IA contains a number of requests for additional evidence / information. These requests are listed below:

**Consultees are invited to submit any available evidence on the additional costs of implementing the Directive in the UK, including any additional costs that would arise from applying for and carrying third party insurance certificates to comply with the Directive** (page 7 of IA);

**Consultees are invited to submit any additional evidence that is available on the number of UK registered ships and / or UK owned ships of 300gt and above that do not currently maintain the third party liability insurance that would be necessary under the proposed Regulations** (page 8 of IA);

**Consultees are invited to submit additional evidence on the costs and benefits of the proposed Regulations (Option 1)** (page 9 of IA);

**Consultees are invited to submit any additional evidence that is available on these potential benefits to victims of maritime incidents, safety and the environment** (page 9 of IA);

**Consultees are invited to submit any additional evidence that is available on the benefits to the shipping industry.** (page 10 of IA);

**Consultees are invited to submit any additional evidence that is available on the benefits to financial institutions.** (page 10 of IA)

**Consultees are invited to submit any additional evidence that is available on the compliance costs to the shipping industry.** (page 11 of IA)

**Consultees are invited to submit any additional evidence that is available on the familiarisation costs to the shipping industry.** (page 12 of IA)

**Consultees are invited to submit any additional evidence that is available on the costs to financial institutions.** (page 12 of IA)

**Consultees are invited to offer any additional evidence on the potential for the proposed Regulations to impact on competition.** (page 13 of IA)

**Consultees are invited to submit any additional evidence on the impacts on small firms, including whether small firms would face costs disproportionate to those incurred by large firms as a result of implementation of the Directive** (page 13 of IA)

## **6. How to respond**

All responses should be provided in writing by post, fax or email, and must be received no later than the closing date which is **16 May 2012**. If you would like further copies of this consultation document, it can be found at [www.dft.gov.uk/consultations](http://www.dft.gov.uk/consultations) or you can contact Andrew Angel (contact details below) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to:

Andrew Angel  
Maritime Trade and Liability Branch  
Maritime Commerce and Infrastructure  
DfT - Zone 2/29  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Tel: +44 (0) 20 7944 5452  
Fax: +44 (0) 20 7944 2186  
Email: [andrew.angel@dft.gsi.gov.uk](mailto:andrew.angel@dft.gsi.gov.uk)

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of consultees is provided at Annex D. If you have any suggestions of others who may wish to be involved in this process please contact us.

## **7. What will happen next**

A summary of responses, including the next steps, will be published within three months of the consultation closing on [www.dft.gov.uk/consultations](http://www.dft.gov.uk/consultations). Paper copies will be available on request.

## 8. Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the DfT.

The DfT will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The information or guidance in this document (including third party information, products and services), is provided by DfT on an 'as is' basis, without any representation or endorsement made and without warranty of any kind whether express or implied.

DfT has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the DfT's website in accordance with the W3C's Web Content Accessibility Guidelines. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the DfT.

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000  
Website [www.dft.gov.uk](http://www.dft.gov.uk)

© Crown copyright 2011

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

## 9. Consultation Criteria

The consultation is being conducted in line with the Government's Code of Practice on Consultation. The criteria are listed in Annex E. But as previously mentioned, due to the specialised nature of the subject matter, the consultation will be for 6 weeks as opposed to the normal 12 weeks.

A full version of the Code of Practice on Consultation is available on the Better Regulation Executive website at <http://www.bis.gov.uk/files/file47158.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

Consultation Co-ordinator  
Department for Transport  
Zone 2/25 Great Minster House  
London SW1P 4DR  
Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

Annex A - Draft Regulations  
Annex B – Insurance Directive  
Annex C – Impact Assessment  
Annex D – List of Consultees  
Annex E – Consultation Criteria