

**2012 No.**

**MERCHANT SHIPPING**

**The Merchant Shipping (Carriage of Passengers by Sea)  
Regulations 2012**

<i>Made</i>	- - - -	2012
<i>Laid before Parliament</i>		2012
<i>Coming into force</i>	- -	31 December 2012

The Secretary of State is a minister designated(a) in relation to measures relating to maritime transport for the purposes of section 2(2) of the European Communities Act 1972(b).

Accordingly, the Secretary of State, in exercise of the powers conferred on her by that section, makes the following Regulations:

**Citation and Commencement**

1.—(1) These Regulations may be cited as the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012.

(2) [Subject to paragraph (3)] these Regulations shall come into force on 31 December 2012.

(3) [These Regulations shall come into force on [date] so far as may be necessary of the purpose of enabling certificates under regulation 7 of these Regulations to be issued before the date mentioned in paragraph 2.]

**Interpretation**

2.—(1) In these Regulations—

“the 2009 Regulation” means Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 3 April 2009 on the liability of carriers of passengers by sea in the event of accidents(c);

“the Act” means the Merchant Shipping Act 1995(d),

“Athens Convention Country” means a country in respect of which the Athens Convention is in force;

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(a) S.I.1994/757.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of , and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1972 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) O.J. L.131, 28.5.2009, P.24.

(d) 1995 c.21

“insurance” means insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention;

“proper officer” has the meaning ascribed to it in section 313 of the Act;

“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Act.

(2) For the purposes of these Regulations expressions used in the 2009 Regulation and in these Regulations have the same meaning as in the 2009 Regulations.

### **Application**

3.—(1) Subject to regulation 4, these Regulations apply to ships and persons engaged in the carriage of passengers by sea to which the 2009 Regulation applies.

(2) Regulations 8(1),(2),(4) and 5, 9,10 and 11 do not apply to government ships, as defined in section 308 of the Act.

### **Dis-Application of the 2009 Regulation in respect of carriage by sea within the United Kingdom**

4. The 2009 Regulations shall not apply to any ship engaged in the carriage of passengers by sea solely within the United Kingdom unless—

- (a) the ship is a Class A ship(a) and the carriage takes place after 30 December 2016; or
- (b) the ship is a Class B ship and the carriage takes place after 30 December 2018.

### **Insurance**

5.—(1) A ship may not enter or leave a port in the United Kingdom, nor if the ship is a United Kingdom ship a port in any other country, unless there is insurance in force, in respect of that ship and a certificate, or certificates, complying with the provisions of regulation 6.

(2) The requirement for the ship to have insurance does not apply to any ship to which the 2009 Regulations do not apply by virtue of regulation 4.

### **Insurance certificates**

6.—(1) The existence of the insurance is to be proved by a certificate or certificates in the form prescribed in (i) the Annex to the Athens Convention or (ii) Appendix B of Annex II to the 2009 Regulation complying showing that there is in force a in respect of the ship insurance satisfying those requirements.

(2) The certificate must be —

- (a) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State
- (b) if the ship is registered in an Athens Convention Country (other than the United Kingdom) a certificate issued by or under the authority of the government of that other Athens Convention country;
- (c) if the ship is registered in a country which is not an Athens Convention country a certificate issued by the Secretary of State or under the authority of any Athens Convention Country
- (d) If the ship is registered in a country which is not an Athens Convention country but which is a Member State of the European Community a certificate issued by, or under the authority of, that Member State.

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(a) Ship classifications are set out in article 4 of Council Directive 98/18/EC on safety rules and standards for passenger ships (O.J. L 144, 15.5.1998, p.1)

- (3) The certificate must—
- (a) be carried on onboard the ship; and
  - (b) be produced on demand by the master to—
    - (i) the Secretary of State or to any proper officer where the ship is a United Kingdom ship; or
    - (ii) the Secretary of State in the case of any other ship.

### **Issue of certificates by the Secretary of State**

7.—(1) Subject to paragraph (2) if the Secretary of State is satisfied on the application for such a certificate as is mentioned in regulation 6 in respect of a United Kingdom ship or a ship registered in any country that is not an Athens Convention country that there will be in force throughout the period for which the certificate is to be issued a contract of insurance or other financial security satisfying the requirements of Article 4*bis* of the Athens Convention the Secretary of State may issue such certificate to the registered owner.

- (2) If the Secretary of State is of the opinion that there is doubt whether
- (a) the person providing the insurance will be able to meet its obligations thereunder; or
  - (b) the insurance will not cover the registered owners liability under the 2009 Regulations;
- the Secretary of State may, after taking into account any other matters which appear to be relevant, refuse to issue the certificate.

(3) Where at any time while a certificate is in force, the person to whom the certificate has been issued ceases to be the owner of the ship to which the certificate relates the certificate shall be delivered up forthwith to the Secretary of State or to a proper officer and in such case shall be cancelled by the Secretary of State.

(4) Where at any time while a certificate is in force, it is established in any legal proceedings that the contract of insurance in respect of which the certificate is issued is or may be treated as invalid the certificate may be cancelled by the Secretary of State and, if so cancelled, shall on demand be delivered up to the Secretary of State by the person to whom it was issued.

(5) Where at any time while a certificate is in force circumstances arise in relation to the issuer or guarantor named in the certificate (or where more than one is so named, any of them) such that if the certificate were applied for at that time, the Secretary of State would have been entitled to refuse the application under paragraph (2) the certificate may be cancelled by the Secretary of State and if so cancelled the certificate shall on demand be delivered up to the Secretary of State by the person to whom it was issued.

(6) If a person required by paragraphs (3) to (5) to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine to exceeding level 4 on the standard scale.

(7) The Secretary of State shall send a copy of any certificate issued under this regulation in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen and the Registrar shall make the copy available for public inspection.

### **Penalties**

- 8.—(1) A shipowner is guilty of an offence if—
- (a) a ship belonging to the shipowner enters or leaves a port in contravention of regulation 5.
  - (b) anyone attempts to navigate that ship into or out of a port in contravention of that regulation.
- (2) A shipowner guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment to a fine.

(3) A master who fails to comply with regulation 6(3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any document required or authorised by virtue of any statutory provision to be served on a foreign company for the purposes of or the institution of (or otherwise in connection with) the institution of proceedings for an offence under this regulation against the company as shipowner is to be treated as served on the company if the document is served on the master of the ship.

(5) In this regulation foreign company means a company or body which is not one to which section 1139 of the Companies Act 2006(a) applies so as to authorise the service of the document in question.

### **Power to detain**

**9.**—(1) A ship may be detained if anyone attempts to navigate it out of port in contravention of regulation 4.

(2) Section 284 of the Act (which relates to the detention of a ship) is to have effect in relation to the ship, subject to the modification that for —

(a) “this Act” there were substituted “the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012; and

(b) “owner of a ship” there were substituted “shipowner”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which—

(a) states the reason for the detention; and

(b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship is detained which is not a United Kingdom ship the Secretary of State must immediately inform, in writing—

(a) the ship’s flag state administration; or, if this is not possible,

(b) the Consul of the State of the flag administration; or, in the Consul’s absence,

(c) the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in paragraph (4) must set out all the circumstances of the decision to detain the ship.

(6) Where paragraph (4) applies the Secretary of State must notify all relevant—

(a) nominated surveyors; or

(b) recognised organisations;

responsible for the issue of classification certificates.

(7) In this regulation “competent authority means any officer mentioned in section 284(1) of the Act.

### **Arbitration**

**10.**—(1) Any question as to whether the matters specified in relation to a ship in a detention notice constitute a valid basis for the officer’s opinion must, if the master or shipowner so requires by notice given to the officer within 21 days from the service of the detention notice be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) Where notice is given by the master or shipowner in accordance with paragraph (1), the giving of notice does not suspend operation of the detention notice.

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(a) 2006 c.46

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether or not the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer's opinion, the arbitrator must—

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in paragraph (4) the arbitrator must affirm the detention notice in its original form.

(6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.

(7) A person is not qualified for appointment as an arbitrator under this regulation unless they are:

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (8); or
- (d) a person with special experience of shipping matters, or of activities carried on within ports.

(8) For the purposes of a paragraph 7(c) a person falls within this sub paragraph if that person—

- (a) satisfies the judicial appointment eligibility condition on a 7 year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007(a);
- (b) is an advocate or solicitor in Scotland of at least 7 years' standing;
- (c) is a member of the bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least 7 years' standing.

(9) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter, and the reference in paragraph (1) above to a single arbitrator appointed by agreement between the parties is to be construed as a reference to a single arbiter so appointed, or, in default of agreement, appointed by the sheriff.

### **Compensation for unjustified detention**

**11.**—(1) If on a reference under regulation 10 relating to a detention notice, the arbitrator decides that the shipowner has proved—

- (a) that the matter complained of did not constitute a valid basis for the officer's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice;

the arbitrator must award the shipowner such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Secretary of State.

(3) In the application of this regulation to Scotland any reference to an arbitrator is to be construed as a reference to an arbiter.

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(a) 2007 c.15

### **Provision of information to passengers**

12. A carrier or performing carrier which fails to supply a passenger with the information specified in article 7 of the 2009 Regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Fees**

- 13.—(1) The fee to be charged for the issue of a certificate under regulation 7 shall be £[•].
- (2) Section 302 (fees) of the Act shall be amended by the insertion of
- “(c) the issue of any certificate pursuant to Regulation (EC) 392/2009 of the European Parliament and Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.”
- after paragraph (b) of subsection (1).

### **Dis application of section 183 of the Merchant Shipping Act 1995**

14. Section 183(1) (scheduled convention to have force of law) of and Schedule 6 to the Act shall not apply to any ship to which the 2009 Regulation and these regulations apply.

### **Review**

- 15.—(1) The Secretary of State must from time to time —
- (a) carry out a review of regulations 2 to 13,
  - (b) set out the conclusions of the review in the a report; and
  - (c) publish the report..
- (2) In carrying out the review the Secretary of State must so far as is reasonable have regard to how the 2009 Regulation is applied in other Member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
  - (b) assess the extent to which those objectives are achieved ; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signatory text

[Signed on behalf of the Secretary of State for Transport] Parliamentary Under Secretary of State  
[Date] 2012 Department for Transport

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Regulation (EC) No. 392/2009 of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents (O.J. L131, 28.5.2009, P.24) ("the 2009 Regulation") which comes into effect on 31st December 2012.

The 2009 Regulation creates a regime relating to liability and insurance for the carriage of passengers by sea as set out in the 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 (“the Athens Convention”) and the International Maritime Organisation’s (“IMO”) Reservation and Guidelines for the implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006.

These Regulations apply to all international carriage where the ship is registered in the United Kingdom, the contract of carriage has been made in the United Kingdom or the place of departure or destination is in the United Kingdom (*Regulation 3*). They also apply to domestic voyages within the United Kingdom on board Class A ships, on or after 30 December 2016 and Class B ships on or after 30 December 2018 (*Regulation 4*). Class A and Class B ships are defined under Article 4 of Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (O.J. L. 144, 15.5.1998, p.1) by reference to the sea areas in which they operate. Class B ships are passenger ships engaged on domestic voyages where they are at no point more than 20 miles from the line of coast. Class A ships are those engaged on domestic voyages operating at greater distances.

Ship must have insurance (*Regulation 5*) as evidenced by a certificate (*Regulation 6*). The Athens Convention sets a minimum level for insurance at 250,000 units of account per passenger on each occasion. Certificates may be issued in the UK by the Secretary of State (*Regulation 7*) and must be carried on board ship and produced on demand (*Regulation 6*). Failure to comply with the insurance obligations or to produce the certificate are offences (*Regulation 8*) and the ship may be detained (*Regulation 9*). Where the validity of a detention is questioned the matter may be referred to arbitration (*Regulation 10*) and compensation awarded (*Regulation 11*).

The Regulations also require that passengers are supplied with information relating to their rights under the 2009 Regulation and failure to do this constitutes an offence (*Regulation 12*).

These Regulations require the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment of the effect these Regulations will have on the costs of the business and the voluntary sector is available from \_\_\_\_\_ at \_\_\_\_\_. A copy has been placed in the library of each House of Parliament. The impact assessment [and a transposition note] [is/are] annexed to the Explanatory Memorandum which is available alongside these Regulations at [www.legislation.gov.uk].