

**GOVERNMENT RESPONSE TO THE CONSULTATION  
ON THE IMPLEMENTATION OF REGULATION (EC)  
392/2009 ON THE LIABILITY OF CARRIERS OF  
PASSENGERS BY SEA IN THE EVEN OF ACCIDENTS  
AND THE UK'S RATIFICATION OF THE PROTOCOL  
OF 2002 TO THE ATHENS CONVENTION RELATING  
TO THE CARRIAGE OF PASSENGERS AND THEIR  
LUGGAGE BY SEA, 1974.**

## SUMMARY OF RESPONSES AND GOVERNMENT'S REPLY

### 1. Overview

1.1 The consultation sought views from the maritime sector on the Department's draft ("the Regulations") implementing into UK law Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents and which, *inter alia*, adopts the key provisions of the Athens Convention as amended by the Protocol of 2002 relating to the carriage of passengers and their luggage by sea.

1.2 Due to the specialised nature of the subject matter, the consultation was addressed mainly to the insurance and shipping industries, rather than to the general public.

1.3 The consultation asked industry if the Government's proposed approach to implementing the EU Regulation would achieve the right outcomes, and that taking the proposed approach would ensure that both administrative burdens and financial costs were kept to a minimum for the UK maritime sector. However, due to the limitations of the available evidence base, it had not been possible to monetise some of these potential costs and benefits, so consultees were invited to provide any additional information or evidence that could help better inform the evidence base used in the Impact Assessment.

1.4 The comments of those organisations that responded are set out in the following document.

### 2. Background

2.1 The Regulations for which the consultation sought views are intended to implement Regulation (EC) 392/2009, which gives effect to the International Convention relating to the Carriage of Passengers and their Luggage by Sea 1974), as amended by the Protocol of 2002 ("the Athens Convention").

2.2 The Protocol of 2002 introduces higher insurance liability limits for carriers of passengers by sea in the event of accidents involving loss of life or personal injury. It also requires such carriers to have compulsory insurance; and it provides claimants with the right of taking direct action against the insurers. The intended effect is to provide an enhanced framework of compensation in the event of death or personal injury to a passenger, or the loss of or damage to luggage when travelling by sea.

2.3 The EU Regulation creates parity for the passenger shipping sector and helps ensure (through national implementation) that UK citizens have access to the same levels of compensation when travelling between two different EU Member States.

2.4 The EU Regulation also extends the scope of the 2002 Protocol to include certain domestic passenger services so that they can enjoy the same level of protection as international journeys. Furthermore, the EU Regulation requires carriers engaged in the carriage of passengers on both domestic and international journeys, to provide passengers with appropriate and comprehensive information regarding their rights.

2.5 The Regulations would implement the minimum requirements of the EU Regulation in the UK, and take up all available derogations, which would defer the application of the EU Regulation to passenger ships of EU Classes A and B on domestic seagoing voyages until 31st December 2016 and 31 December 2018 respectively.

2.6 The Impact Assessment presented the available evidence on the additional costs and benefits of the Regulations and concluded that there would be no additional costs and benefits other than those associated specifically with taking up the derogations.

### **3. Summary of Responses and Government Reply**

3.1 Out of 34 institutions and organisations that were invited to comment, only 5 took the opportunity to do so. The following summary of consultation responses is set out by the questions posed in the Consultation Document. A list of those consultees who provided comments is set out (at **Part 3**).

3.2 Those that responded gave a broad endorsement of the UK's proposed approach to the transposition and application of the Athens Convention, as amended by the 2002 Protocol, though a number of individual points were raised, and which are set out below.

3.3 There are no references in this summary note to comments made about the Regulations that were of a purely editorial or presentational nature.

## **Part 1**

### **Question 1**

**Do you agree with the Government's preferred approach to make use of the derogations that exist in the EU Regulation and only apply the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 to carriage by sea within the UK onboard ships of Class A and B from 31 December 2016 and 31 December 2018?**

Those that responded to the consultation supported the Government's approach to applying the derogations provided for in the EU Regulation.

## **Question 2**

**Do you agree with the Government's preferred approach to apply the EU Regulation to carriage by sea within the UK onboard ships of Class A and B only?**

Respondents were content with the Government approach and clearly understood that Class C and D type vessels would remain outside the scope of the Regulation. They acknowledged that it remained to be seen whether the Commission would bring forward proposals to extend the scope of this EU Regulation to bring these types of vessel into scope (which is specifically provided for in Article 1.3 of the EU Regulation).

## **Question 3**

**Do you agree that the Athens Convention 1974 should continue to apply to domestic seagoing voyages not covered by the Merchant Shipping (Carriage of Passengers by Sea) Regulation 2012?**

IGP&I Clubs supported the Government's approach but sought clarification as to whether some operators of Class A and B vessels engaged in voyages from the UK to the Crown Dependencies would be subject to the higher domestic limit of 300,000 SDR, or the lower limits of 46,666 SDR as established by the 1974 Athens Convention, while the derogations remained in force. Furthermore, IGP&I Clubs were unclear as to whether such journeys, if/when caught by the Regulation, would be regarded as domestic or international. These particular points are addressed in response to Question 12.

## **Question 4**

**Do you agree that the UK is right not to adopt a higher national limit of liability than the 400,000 units of account prescribed in Article 7 of the 2002 Protocol?**

Respondents saw no problem with the Government taking this approach, although the IGP&I Clubs indicated that if the Government were to seek, at some point in the future, a higher limit than that prescribed in the Protocol, there would need to be a policy discussion / consultation with the affected industry sectors and stakeholders.

## **Question 5**

**Do you agree with the Government's proposal to retain the existing national limit of liability of 300,000 units of account per passenger per carriage in relation to the carriage at sea of passengers on domestic voyages including the carriage at sea of passengers onboard ships of EU Class A (until 31 December 2016) and EU Class B (until 31 December 2018)?**

Only one of the respondents disagreed with the Government approach on this matter, arguing that there are a small number of claimants who are currently undercompensated and would continue to be so under the new regime. The respondent suggested that with little cost to the insurer and with minimum regulatory burden on shipowners, the UK could enhance its reputation as a service provider for passengers. There was concern that even though there was in effect little difference in rates for potential claims between 300,000 and 400,000 SDR's, the difference would only add further confusion to those seeking recompense. However, the Government does not believe that the lower limit of 300,000 (which would be applied to Class A and B vessels on domestic voyages) would represent a significant shortfall in meeting the cost of a claim.

### **Question 6**

**Do you agree with the UK's proposal to remove from UK law the owner of a passenger ship's right to limit liability under LLMC in respect of claims arising from loss of life or personal injury to passengers of a seagoing ship?**

Respondents felt that this was an appropriate step to take and raised no issues with the Government's approach.

### **Question 7**

**Do you agree that the criteria the UK is proposing to use when considering whether to issue a State certificate are fair and proportionate?**

There were no substantive issues raised by respondents concerning the proposed criteria associated with the issuance of the State certificate.

### **Question 8**

**Do you agree that there is a need for a uniform approach between EU Member States with regard to the State certification provisions contained in the EU Regulation and the 2002 Protocol? Do you agree with the UK's preferred policy approach as set out at Appendix 3?**

Respondents agreed with the Government's approach concerning a unified approach amongst EU Member States. In particular, IGP&I Clubs noted that Regulation 7 provides that the competent authority (Maritime & Coastguard Agency) will issue State certificates to both UK and foreign flagged ships that require State certificates in order to operate within EU jurisdiction (subject to the underlying insurance satisfying the criteria set out in Appendix 2 of the consultation document - such criteria is especially relevant to the providers of war and terrorism insurance cover who are not members of the International Group).

## Question 9

**Do you agree with the UK's proposed interim arrangements, which would apply if a situation arises whereby the EU Regulation applies but the 2002 Protocol is not yet in force? Are there any other interim arrangements that would need to be put in place?**

Respondents were content with the proposed Government position on this issue.

## Question 10

**Do you agree that it is appropriate to create an offence to enforce Article 7 of the EU Regulation? How does the industry discharge the notice requirement at present? Is it appropriate to specify certain provisions on the ticket itself?**

The Chamber of Shipping did not believe that it was appropriate to create an offence to enforce Article 7 of the EU Regulation (covering the requirement to provide passengers with information) since they argued that the provisions were dependent on the Commission producing a summary of information that should reflect the main provisions of the EU Regulation. The Commission has circulated such a summary document and made two further points of clarification:

- (a) that the Commission's summary does not affect the obligations of carriers under the Athens Regulation, other than the specific obligation to provide sufficient information to passengers on their rights. Hence, the summary should not be construed as a prerequisite for implementation of the Regulation – or preparation for implementation for that matter – as a whole, but rather as a means to ensure implementation of the obligation under Article 7; and
- (b) with regard to the latter, it only establishes a minimum standard and carriers are by all means free to use their own summaries or information notices to comply with this obligation so long as these are comprehensive enough to satisfy the minimum standard.

## Question 11

**Do you agree with the UK's proposed enforcement regime? Do you consider the proposed offences and penalties, alongside the non-criminal sanctions available to Port State Control, to be enough of an incentive to comply with UK law?**

Respondents raised no questions or concerns regarding the enforcement regime that the Government is proposing to use to ensure compliance from the industry.

## **Question 12**

### **Do you agree with the proposed approach in respect of voyages between the UK mainland and the Crown Dependencies?**

Whilst respondents agreed with the Government approach to allow OTs and CDs to adopt the 2002 Protocol if they so wish, there was some concern about how journeys between Crown Dependencies (and Overseas Territories) and the UK mainland may be defined and whether they fall in scope of domestic or international journeys. In response, the Government does not consider such a journey to be “international” in nature because the journey is, effectively, to a possession of the Crown.

Furthermore, since Crown Dependencies are not considered part of the EU, such journeys cannot be considered to be a “domestic” journey for the purposes of the EU Regulation either. Nevertheless, they are considered to be “domestic” journeys for the purposes of the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987. Therefore, journeys between mainland UK and the Crown Dependencies are able to attract a liability of 46,666 (if the principle place of business is within the Crown Dependency) or 300,000 SDRs per passenger if the principle place of business is on the UK mainland.

Once the UK ratifies the 2002 Protocol (and when it enters into force internationally), and amends Schedule 6 of the MSA 95, we will be paving the way for the Crown Dependencies to seek the extension of the UK’s ratification to their territories. Any expression to extend ratification would need to provide a clear indication of which Classes of vessel this was to be applied to.

## **Question 13**

### **Do you agree with the proposed approach in respect of the other domestic secondary legislation relevant the carriage of passengers at sea, in the UK?**

Only the Chamber of Shipping responded to this question, and understood (and agreed) with the need to streamline other UK secondary legislation concerning the carriage of passengers by sea. This work will be carried out by means of other consequential amendments, following implementation of the EU Regulation.

## **Question 14**

### **Are you able to provide any additional evidence relating to the costs and benefits associated with the proposed Regulations?**

Only the Passenger Shipping Association (PSA) commented on this point, and they understood that the Government was recommending ‘Option 3’ as the most appropriate option as it balances the need to protect passengers

travelling on board 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.

Furthermore, the PSA understood that, 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 on board domestic seagoing passenger ships would have access to some protection. The PSA was in agreement with this.

No further information or evidence was produced from any of the other respondents.

## **Part 2**

### **Summary of requests for information set out in the Impact Assessment (IA)**

The Consultation document made clear that it needed to be read in conjunction with the Impact Assessment that accompanied it and which provided detailed consideration of the costs and benefits to business associated with the implementation of Regulation (EC) 392/2009. However, due to the limited evidence base, it had not been possible to monetise any of the costs and benefits that were identified in the Impact Assessment.

None of the respondents provided any new information that could help more fully inform the Government's consideration of the costs and the benefits of the proposed Regulation, nor did they make any comment regarding the assessments and analysis made by the Government in consideration of its assessment on costs and benefits.

In the light of this, the Government has been unable to develop further its original assumptions and assessments and so the original analysis of cost and benefits remains in place.

## **Part 3**

### **List of Respondents who provided comments**

#### **Organisations or Institutions:**

- 1. The Chamber of Shipping**
- 2. The International Group of P&I Clubs**
- 3. The Association of Personal Injury Lawyers (APIL)**
- 4. Grahame Aldous QC (responding in a personal capacity)**
- 5. The Passenger Shipping Association**