

**Consultation on the implementation of EU
Regulation(EC) 392/2009 on the liability of carriers
of passengers by sea in the event 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.**

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Department for Transport
2/29 Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web site: www.dft.gov.uk

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Foreword

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. However, we should not be complacent, and the recent incident involving the *Costa Concordia* is a testament to how important it is to ensure that compensation and liability regimes continue to be effective.

The UK as an island nation is heavily reliant on shipping services. The passenger shipping industry plays an important role in the economy of the UK and provides a service to millions of people every year. Currently in the UK, over 40 million journeys onboard ferries are taken annually, with many crossings being undertaken on lifeline ferry services that ensure remote and fragile communities are linked into the wider economy and society. In addition, each year approximately 1.5 million passengers take a cruise that departs from a UK port.

The 1974 Athens Convention was an important international maritime instrument because it established, for the first time, a regime of liability in cases of the death of, or personal injury to, a passenger and the loss of, or damage to, luggage. However, it is widely recognised that improvements to the regime are needed to make sure that it keeps pace with the times, and there are some well-accepted principles being applied in liability and compensation regimes dealing with environmental pollution that could be applied, to ensure that passengers have access to adequate, prompt and effective compensation in the future.

The 2002 Protocol to the Athens Convention (which will be given effect at EU level by Regulation (EC) 392/2009¹) will provide a significant enhancement to the existing regime of liability for the death of, or personal injury to, a passenger and the loss of, or damage to, luggage at sea. The 2002 Protocol will introduce compulsory insurance to cover passengers on ships and raise the financial limits of liability. The 2002 Protocol also replaces the fault-based liability system with a strict liability system for shipping-related incidents (backed by the compulsory insurance requirement) and allows a claim for compensation to be brought directly against the insurer.

The case for an enhanced international system has been established, and the application of the EU Regulation from 31 December 2012 will ensure a uniform approach by extending the provisions of the 2002 Protocol across the whole of the EU. This will create a level playing field for the passenger shipping sector and help ensure that UK citizens have access to same levels of compensation when travelling between two different EU Member States. The EU Regulation also extends the scope of the 2002 Protocol to cover certain domestic passenger services.

The EU Regulation is likely to come into force before the UK ratifies the 2002 Protocol. Nevertheless, we expect, when ratifying the Athens Protocol of 2002, to make a reservation in line with the IMO Reservation and Guidelines for implementation of the Protocol, adopted by the Legal Committee of the International Maritime Organisation on 19 October 2006².

¹ Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L131, 28.5.2009, p. 24)

² See Annex II of Regulation (EC) 392/2009

The 2002 Protocol will only come into force 12 months after at least 10 Contracting Parties have ratified it and to date, only 8 have taken this step. Nevertheless, since the EU Regulation is binding on Member States, the UK will still need to be able to issue certificates to UK-flagged vessels by 31 December 2012.

The case for an enhanced regime that is applicable to the carriage of passengers on domestic voyages is less clear, the benefits less obvious and the costs proportionately more to certain operations. The Government is, therefore, minded, in accordance with its own better regulation principles, not to extend the 2002 Protocol (via the EU Regulation) to domestic seagoing passenger voyages other than to carriage onboard EU Class A and B ships³ from 31 December 2016 and 2018 respectively. It is proposed that there will be no change for passengers travelling onboard other domestic seagoing passenger services. They will continue to be protected by the existing provisions of the Athens Convention as previously modified in the UK by existing secondary legislation which applied a higher limit of liability.

Although this is a complex area, we would welcome the views of all those that may be affected by the proposed approach. We hope that through this consultation process we will be able to better understand the pros and cons and the associated economic consequences.

In view of the specialised nature of the subject matter, the need to facilitate the issuing of State Certificates attesting that shipowners have the necessary insurance in place to meet their obligations under the EU Regulation in advance of when it enters into force, and to minimise the risk of infraction proceedings, we are conducting this consultation over a period of 6 weeks.

We look forward to receiving your comments.

³ Ship classifications are set out in Article 4 of Council Directive 98/18/EC on safety rules and standards for passenger ships (OJ L 144, 15.5.1998, p.1)

1. Definitions

1.1 For the purposes of this consultation paper:

- **The 2002 Protocol** refers to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- **The Athens Convention** refers to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- **The EU Regulation** refers to Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents which was adopted in 2009.
- 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 of 14 August 2012, 1 SDR was worth around £0.96 (\$1.50).⁴
- **The Act** means the Merchant Shipping Act 1995.
- **Class A ship and Class B ship** refer to classifications of vessels set out in Directive 98/18/EC on safety rules and standards for passenger ships.

2. The Legal Framework – International

2.1 The UK is a State Party to the 1974 Athens Convention which establishes a regime of liability for damage suffered as a result of death or personal injury to a passenger, or the loss of, or damage to, luggage, by sea.

2.2 In 2002 the International Maritime Organisation (IMO) adopted a Protocol to the Athens Convention, which introduced compulsory insurance to cover passengers on ships and raised the limits of liability. It also introduced other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents (backed by the compulsory insurance requirement) and the ability for a claim for compensation to be brought directly against the insurer.

2.3 The 2002 Protocol will:

- Introduce higher liability limits on carriers (from approximately £45,000 to approximately £400,000 per passenger per carriage)*;
- Require the carrier to provide evidence of insurance up to approximately £250,000* per passenger on the basis of strict liability;
- Require 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 in the UK);
- Allow a claim for compensation to be brought directly against the insurer up to approximately £250,000*; and

⁴http://www.imf.org/external/np/fin/data/param_rms_mth.aspx

* these figures are based on current SDR rates set out in Section 1.1 and which are correct at time of publication

- 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 is time-barred after a period of two years.

2.4 In 2006 the IMO Legal Committee adopted the text of a reservation to the 2002 Protocol and adopted Guidelines for the implementation of the Athens Convention, to allow limitation of liability in respect of claims relating to war or terrorism.

3. The Legal Framework – EU

3.1 To expedite ratification of the 2002 Protocol by the EU and its Member States, Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents was adopted in 2009.

3.2 Furthermore, the EU Regulation extends the requirements of the 2002 Protocol, including compulsory insurance requirements for international voyages, to domestic carriage by sea within a single Member State on board ships of certain categories and if a Member State so decides, to all domestic sea-going voyages.

3.3 The EU Regulation also introduces a number of supplementary measures intended to further enhance the provision of compensation to passengers. The EU Regulation will be directly applicable in the UK from 31 December 2012. This means that all EU-registered ships, wherever they are, and all ships (of whatever nationality) engaged on journeys to and from any EU port will have to comply with the 2002 Protocol.

3.4 An electronic version of Regulation (EC) 392/2009 can be viewed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0024:0046:EN:PDF>

4. The Legal Framework – UK Domestic

4.1 The 1974 Athens Convention entered into force internationally on 30th April 1987. On the same day the Athens Convention was also applied to internal services in the UK through the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987⁵, which extended the requirements of the Athens Convention to contracts for the carriage of fare-paying passengers where the places of departure and destination are between the UK, the Channel Islands and the Isle of Man and where there is no intermediate port between those normal routes of passage..

4.2 The Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998⁶ established an enhanced national liability limit of up to 300,000 units of account 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) as a result of the Herald of Free Enterprise disaster in 1987 from 46,666 to the equivalent of 100,000 SDR.

⁵ S.I.1987/670

⁶ S.I. 1998/2917

4.3 In addition there are two other pieces of secondary domestic legislation which are to be reviewed as part of this consultation. These are:

- The Carriage of Passengers and their Luggage by Sea (Notice) Order 1987⁷, which requires a carrier to whom the Athens regime applies to give passengers notice of specified provisions of the Athens Convention; and
- The Carriage of Passengers and their Luggage by Sea (Parties to Convention) Order 1987⁸ which declares the States that are parties to the Athens Convention as at 17 June 1987.

5. Scope of the Consultation Exercise

5.1 The primary aim of this consultation exercise is to seek views on the UK's implementation of the EU Regulation via the adoption of the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012. A copy of these draft Regulations is included as part of this consultation (at **Annex A**), and a copy of EU Regulation (EC) 392/2009 is also attached (at **Annex B**).

5.2 The consultation does not seek views on the provisions of the 2002 Protocol which are directly applicable in the UK by virtue of them being incorporated into the EU Regulation.

5.3 As part of the ratification process of the 2002 Protocol, we will also seek to ensure that the Crown Dependencies (Jersey, Guernsey and the Isle of Man) are also included at the same time. To achieve this, we will need to amend Schedule 6 of the Merchant Shipping Act 1995 ('the Act'). Amending the Act will provide the mechanism to enable each Crown Dependency to establish regulations within their legislative framework, as described further in the consultation document at section 13.

5.4 Finally, some consequential amendments to harmonise the existing secondary domestic legislation, as indicated in section 4, is described in the consultation document at section 14.

6. Territorial Application of the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012

The EU Regulation applies to any international carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different Member States or, if within a single Member State, according to the contract of carriage or scheduled itinerary, there is an intermediate port of call in another Member State.

The EU Regulation shall also apply to the carriage by sea within a single Member State on board ships of Classes A and B² [where: :

- (a) the ship is flying the flag of or is registered in a Member State;
- (b) the contract of carriage has been made in a Member State; or

⁷ S.I.1987/703

⁸ S.I.1987/931

(c) the place of departure or destination, according to the contract of carriage, is within a single Member State.

A list of the known domestic Class A and B seagoing passenger ships, including the routes that they operate on within the UK, is set out in **Appendix 1**.

Article 11 of the EU Regulation offers Member States the possibility to defer the application of the Regulation until 31 December 2016, for carriage by sea on board ships of Class A, and until 31 December 2018 for carriage by sea on board ships of Class B. The Government's preferred approach, which is in accordance with its own better regulation principles, is to make full use of these derogations.

Question 1: Do you agree with the Government's preferred approach to make full 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 on board ships of Class A and B from 31 December 2016 and 31 December 2018 respectively?

The EU Regulation also provides that Member States may extend its application to all domestic seagoing voyages (not just Classes A and B) and also indicates that the European Commission has the option to present, if appropriate, a legislative proposal by 30 June 2013 to extend, amongst other things, the EU Regulation to ships of Classes C and D.

The UK's preferred approach is not to extend the application of EU Regulation to all domestic seagoing voyages at this time. However, we recognise that the European Commission may present a legislative proposal to extend the scope of the EU Regulation to ships of Classes C and D, and in this eventuality the UK would review its own policy.

Although the option exists to include all domestic UK seagoing voyages there are, however, a number of difficulties in applying the EU Regulation. For example, ships that are within scope would need to have both third-party liability insurance cover (which most shipowners already have) for shipping related risks, as well as having in place appropriate insurance to cover incidents resulting from war or acts of terrorism

The latter type of cover will very likely place a new financial obligation on shipowners, and it is an obligation that the Government considers to be disproportionate to the risk for such operations normally carried out by Class C and D ships. Many of the smaller passenger ships which operate in our domestic waters are life-line services that function because of necessity rather than because of any economic return. Applying the EU Regulation more widely than to just ships of Class A and B would be difficult to enforce in the UK since it is common for ships of Class C or D that are certified to go to sea to actually operate on inland (i.e. categorised) waters. There are also competition issues with applying the EU Regulation more widely. Ships that are more than 25 years old do not need to be EU classified, and there are also a great number of passenger ships with UK certification that are not currently operational. Indeed, there is no requirement in UK law to inform the Government that such ships are operating again. There are likely to be a significant number of classified seagoing passenger ships that are operated by micro-businesses. Therefore, for these reasons it is the Government's view that the EU Regulation should only be applied to Class A and B type ships operating within the UK.

Question 2: Do you agree with the Governments preferred approach to apply the EU Regulation to carriage by sea within the UK on board ships of Class A and B only?

7. Application of the 1974 Athens Convention to the Carriage at Sea of Passengers on other Domestic Voyages

Whilst our preferred approach is to apply the EU Regulation in the most minimalist way possible, we recognise that it will be important to continue to have an acceptable 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, when the passenger is being carried on board a domestic seagoing passenger ship other than a Class A or B ship.

Our approach will be to continue to apply the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987; the effect of which will be that the provisions of the 1974 Athens Convention will continue to apply to the carriage of fare-paying passengers on domestic seagoing voyages within the UK, the Channel Islands and the Isle of Man (in other words, those passengers being carried on Class C or D type ships) where there is no intermediate port of call. It is also proposed that these provisions will continue to apply to the carriage of passenger's onboard EU Class A or B ships until the applicable EU derogations of 31 December 2016 and 2018 cease to have effect. This means that until the derogations cease to apply, the current national limit of 300,000 units of account are retained for domestic seagoing journeys carrying passengers where the carriers principle place of business is in the UK. For those carriers whose principle place of business is outside of the UK, the limit of 46,666 units of account will continue to apply.

Whilst there will be no legal requirement on the operators of such ships to have compulsory insurance to cover their liabilities, we understand that the majority of operators already take out, on a voluntary basis, insurance to cover shipping-related risks, for example collision. It is assumed that in general terms market related principles are working, that the risks of not having insurance outweigh the potential benefits and therefore the need for further regulation is not considered necessary.

However, it will not be possible for a claim for compensation to be brought directly against the insurer (if insurance cover is in place), so the claimant will have to prove that the ship operator was at fault. This might mean that obtaining adequate compensation is a slower, more complex and more uncertain process.

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) Regulations 2012?

8. Limit of liability

Article 7 of the 2002 Protocol states that the limit of liability for death and personal injury shall not exceed 400,000 units of account. However, a State Party may, if it so wishes, regulate a national limit of liability beyond that prescribed in the 2002 Protocol, provided it is not lower than the 400,000 units of account. There is not, however, any evidence available to suggest that there is a need to have a national limit of liability that is higher

than that prescribed in the 2002 Protocol and the UK proposes that the prescribed 400,000 limit will be the UK's new limit of liability.

Question 4: Do you agree that the UK is right to not to adopt a higher national limit of liability than the 400,000 units of account prescribed in Article 7 of the 2002 Protocol?

The 2002 Protocol is supported by a set of guidelines which provides State Parties a reservation to allow limitation of liability in respect of claims relating specifically to war or terrorism. State Parties reserve the right to limit liability to 250,000 units of account in respect of each passenger on each distinct occasion, or 340 million units of account overall per ship on each distinct occasion.

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) it is proposed to retain the existing national limit of liability of 300,000 units of account per passenger per carriage. As a result of retaining this level of liability for certain domestic voyages while applying an enhanced limit of liability of 400,000 units of account in relation to the carriage at sea of passenger's onboard ships of EU Class A and B will have the effect of creating a two tiered system.

There are benefits and disadvantages to this approach. Firstly, there is no evidence to suggest that the national limit of 300,000 units of account is in fact inadequate, and discussions with the insurance industry have suggested that it is incidents - and the subsequent claims - that determine the cost of insurance (where it is in place), rather than any fixed limit of liability.

However, it is equally true to say that passengers may not understand, or be aware, that there are differences in the limits of liability depending on the classification of the ship, which is primarily a maritime safety related mechanism. Establishing a single national limit of liability of 400,000 units of account would rationalise and simplify the UK's approach and would help make more sense to passengers,. However, such rationalisation of increasing the national limit of liability to 400,000 units of account for domestic voyages - other than those of EU Class A and B - would not mean that operators have to take out insurance, nor does it allow a claim for compensation to be brought directly against the insurer (if there is insurance in place) or change the basis of the liability from fault based to strict.

The Government therefore proposes that the current national limit of 300,000 units of account are retained for domestic sea journeys carrying passengers where the carriers principal place of business is in the UK until the EU derogations cease to have effect.

Question 5: Do you agree with the Governments 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)?

9. The Convention on Limitation of Liability for Maritime Claims (LLMC)

The UK is also a State Party to the International Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, as amended by the Protocol of 1996. This Protocol allows

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 for the shipowner on any distinct occasion is 175,000 units of account multiplied by the number of passengers which the ship is authorised to carry.

The LLMC, as amended by the Protocol of 1996, forms part of UK law through section 185 of and Schedule 7 to the Merchant Shipping Act 1995, and enables the UK to regulate the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided the limit of liability is not less than 175,000 units of account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

Article 5 of the EU Regulation states that it shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the LLMC as amended by the Protocol of 1996 including future amendment thereto.

Therefore, shipowners could, under existing UK law, be entitled to invoke the global limitation in the LLMC in respect of a claim to which the 2002 Protocol applied and could limit their 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.

Nevertheless, the Government's view is that a shipowner's right to limit their liability under LLMC would undermine the overall effectiveness and objective of the national limit of liability, since it would apply to the carriage of passengers on domestic voyages, including Class A ships (until 31 December 2016) and Class B (until 31 December 2018), as well as negatively impacting on the EU Regulation (as a result of national transposition).

Even though the EU Regulation and the 2002 Protocol require shipowners to have compulsory insurance or financial security of not less than 250,000 units of account per passenger on each distinct occasion, LLMC provides a mechanism that enables a shipowner to limit his liability on any distinct occasion to 175,000 units of account multiplied by the number of passengers. This could have the effect of significantly reducing the amount of compensation available to a claimant and undermine the objectives and spirit of the Athens Convention which is to ensure that there is adequate compensation available to passengers, and that can be paid promptly.

It is, therefore, proposed that the right of the owner of a passenger ships to limit liability under LLMC in respect of claims arising from loss of life or personal injury to passengers of a seagoing ship is removed from UK law.

Question 6: Do you agree with the UK's proposal to remove from UK law the right of the owner of a passenger ships to limit liability under LLMC in respect of claims arising from loss of life or personal injury to passengers of a seagoing ship?

10. Compulsory Insurance

The 2002 Protocol requires the operator of ships on international carriage that are registered in a State Party and which are licensed to carry more than 12 passengers, to maintain insurance or other financial security to cover liability under the Athens Convention in respect of the death of and personal injury to passengers. The limit of the compulsory

insurance or other financial security must not be less than 250,000 units of account per passenger on each distinct occasion. Subject to the outcome of this consultation the EU Regulation as implemented through the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 will extend this requirement to the operators of EU Class A or B ships from 31 December 2016 and 31 December 2018 respectively.

It is reported, by the shipping industry, that the majority of shipowners already have adequate insurance to cover their non-war related risks. Such insurance, however, is unlikely in the majority of cases to allow a claim for compensation to be brought directly against the insurer or other person providing financial security. But it is a key requirement of the 2002 Protocol.

In relation to the limitation of liability in respect of claims relating to war or terrorism, the reservation to the 2002 Protocol and the adopted Guidelines for the implementation of the Athens Convention stipulate that the requirement to maintain compulsory insurance or other financial security for death or personal injury to a passenger caused by such risks shall be either 250,000 units of account in respect of each passenger on each distinct occasion or 340 million units of account overall per ship on each distinct occasion, whichever is the lesser amount. The insurance certificates covering the risk of war and terrorism are to be issued by a specialist Certificate of Financial Responsibility (COFR) provider. Marsh Ltd - a worldwide insurance broker specialising in risk management - has confirmed to the International Maritime Organization that it will provide the necessary insurance to cover war and terrorism.

The shipping industry has noted that while a shipowner may purchase war risk cover (i.e. Hull War Risk insurance) from the commercial market to supplement the \$500 million of P&I War Risk cover purchased by the International Group of P&I Clubs, the level of cover available to shipowners is not going to be sufficient to cover incidents indicated in the provisions of the 2002 Protocol. Therefore, the operators of ships that fall within the scope of the EU Regulation will need to take out additional war and terrorism cover from the COFR provider. The exact details of the insurance product to be supplied by Marsh Ltd are still being developed.

In order to be able to obtain a State certificate attesting that insurance or other financial security is in force in accordance with the 2002 Protocol, a shipowner will need to be able to submit evidence of insurance (e.g. Blue Cards) to the competent authority of a State Party, so as to demonstrate that they have insurance in place to cover both non-war and war/terrorism related risks. The competent authority in the UK will be the Maritime and Coastguard Agency (MCA) which is an agency of the Secretary of State for Transport.

The UK's criteria for accepting, in relation to liability for death or personal injury to passengers, for both non-war and war and terrorism certificates of insurance or other financial security, are set out at **Appendix 2** for consideration. The criteria only apply to protection and indemnity insurance provided by a P&I Club outside the framework of the International Group. The aim of the criteria is to give shipowners and insurance companies clear guidelines on the information that will need to be provided to the UK Government prior to issuance of any State certification relating to the 2002 Protocol and the EU Regulation.

Question 7: Do you agree that the criteria the UK are proposing (set out in **Appendix 2**) to use when considering whether to issue a State certificate are fair and proportionate?

11. State Certification

The 2002 Protocol requires⁹ that a certificate attesting that insurance or other financial security is in force is issued to each ship after the competent authority of a State Party has determined that such insurance or other financial security is in place. In cases where a ship is registered in a State Party, such certification shall be issued by the Competent Authority of that State, and in cases where a ship is not registered in a State Party, such certification may be issued by the Competent Authority of any State Party.

MCA will be acting as the Competent Authority in the UK for the issuing of certificates and, in line with HM Treasury Managing Public Money Guidelines¹⁰, MCA will seek full cost recovery for the administration of issuing such certificates and have indicated that in order to achieve full cost recovery and ensure, for the purposes of issuing certificates, the minimum fee that they expect to charge will not be less than £31. This will be the fee at whatever point in the year that a shipowner applies for such a certificate.

Whilst this figure will achieve the full cost recovery for MCA, it should also be noted that a more comprehensive review of the MCA fees framework is anticipated to take place next year, in 2013, when it is expected that the other fees that MCA currently charge will also be brought into line to ensure full cost recovery and that no costs fall to the general taxpayer.

The 2002 Protocol has been given effect through the EU Regulation, which applies from 31st December 2012. However, the entry into force provisions of the 2002 Protocol has not yet been triggered at international level, where a minimum of 10 Contracting parties have to deposit their instruments of ratification or accession. In such a case, the Protocol will enter into force 12 months after that date. However, as of 31 May 2012, only 8 Contracting Parties have done so. Therefore it is possible that the EU Regulation will apply directly to all EU Member States before the 2002 Protocol is in force.

The possible consequence of this situation, where the application of two international instruments may have different entry into force dates, creates a technical problem with regard to State certification – particularly when the State certificate annexed to the EU Regulation is identical to that annexed to the 2002 Protocol. EU Member States and the European Commission will need to agree an approach that is both legally robust and offers a pragmatic solution.

From the perspective of the UK, a uniform approach with regard to State certification by EU Member States is of paramount importance, because there is a significant risk that if there is not a common approach, then the shipping industry may encounter Port State Control problems both within EU and with the relevant authorities in States outside the EU that are Party to the 2002 Protocol, particularly if clear instructions are not provided.

The UK has considered various certification scenarios from the perspective of the UK as a flag State and a port State and is currently engaging other EU Member States in an attempt to agree a uniform approach. It is the UK's preferred policy to issue and/or accept a single certificate of insurance to cover the UK's obligations under the EU Regulation and the 2002 Protocol; this is because the compulsory insurance obligations under both

⁹ Article 4(bis) (2) of Annex 1 of Regulation (EC) 392/2009

¹⁰ http://www.hm-treasury.gov.uk/psr_mpm_index.htm

instruments are identical. The UK is not however proposing to issue or accept a single certificate of insurance in all circumstances.

The various scenarios describing the possible UK approach are set out at **Appendix 3**.

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**?

The UK recognises that as the 2002 Protocol will not be in force when the EU Regulation comes into force, it will be necessary to put in place interim arrangements for the successful implementation of the EU Regulation into UK law. The draft Regulations that we are proposing in this consultation document anticipate this situation and includes a provision that recognises that it may also be necessary to accept, for the period of time when the EU Regulation applies, (but the 2002 Protocol doesn't), a certificate issued by an EU State that is also not Party to the 2002 Protocol.

Question 9: Do you agree with the UK's proposed interim arrangements which would apply when a situation arises whereby the EU Regulation applies but the 2002 Protocol is not yet in force? Are there any other interim arrangements that could be put in place?

12. Offences and Penalties

The EU Regulation will have the force of law in the UK so there will be a need to incorporate a number of offences and penalties into the domestic legislation to ensure compliance. Offences and penalties will mirror the well established, comprehensive and coherent structure of maritime regulatory enforcement which already exists in the UK and is well understood within the maritime community.

Subject to the agreement of the Secretary of State for Justice, it is proposed that the following offences and penalties be established in respect of any international carriage, and the carriage at sea of passengers on domestic voyages onboard ships of EU Class A (from 31 December 2016) and EU Class B (from 31 December 2018):

A. Failure to insure:

The master and operator of a ship will each be 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 UK, or if the ship is a UK 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 is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.

B. Production of certificates:

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

C. Cancellation of certificates:

Compulsory insurance certificates issued by UK authorities may, in certain circumstances, be cancelled and required to be delivered up. A person who fails to deliver up a certificate will be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

D. Notice:

The carrier will be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale if they have not provided passengers with appropriate and comprehensible information regarding their rights under Article 7 of the EU Regulation. Such notice shall include the provisions of the 2002 Protocol that may be applicable, a statement that in most cases the carriers' liability for death and personal injury or loss of or damage to luggage (including a vehicle) is limited and that luggage is presumed to have been delivered undamaged unless written notice is given.

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 requirements at present? Is it appropriate to specify certain provisions on the ticket itself?

E. Existing provisions:

It is proposed that existing offences that require carriers operating under the Athens Convention to give notice to passengers of provisions within that Convention will be retained in respect of passenger ships on domestic seagoing voyages that fall outside the scope of the EU Regulation.

In addition to the above criminal sanctions, a ship may be detained if anyone attempts to navigate it out of a UK port without a certificate attesting that insurance or other financial security is in force in accordance with the relevant provisions of the 2002 Protocol. If a ship attempts to leave a UK 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.

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?

13. The Crown Dependencies and the Overseas Territories

The EU Regulation does not apply to the Crown Dependencies (i.e. the Channel Islands and the Isle of Man) or to the Overseas Territories (with the exception of Gibraltar). Nor does it apply to voyages between mainland UK and the Crown Dependencies because such journeys are considered to be neither domestic nor international in nature.

However, to provide a suitable mechanism for voyages between mainland UK and the Crown Dependencies and to enable the Crown Dependencies themselves to have the 2002 Protocol (as adopted by the International Maritime Organization rather than the 2002 Protocol introduced into EU law) extended to them, it is proposed to make use of the

power in section 183 of the Merchant Shipping Act 1995 to modify Schedule 6 (which currently sets out the text of the Athens Convention into UK law).

It is proposed to amend Schedule 6 to the Act to take account of the 2002 Protocol so that ships carrying passengers between mainland UK and the Crown Dependencies are required to have compulsory insurance and the relevant State certification prior to entering a UK port. The modification of Schedule 6 will also provide the Crown Dependencies with the mechanism to develop their own local legislative framework and have the 2002 Protocol extended to them. Such legislation in the Crown Dependencies will apply the 2002 Protocol to foreign flagged ships entering ports in the Crown Dependencies and any relevant ships registered locally in the Crown Dependencies wherever they may be.

It is proposed that the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 will be retained to ensure that passengers being carried at sea on domestic voyages (i.e. 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 intermediate port of call outside that area) other than those within the scope and application of the EU Regulation, continue to have the protection of the Athens Convention. In other words, the existing limit of 300,000 units of account will continue to apply.

Question 12: Do you agree with the proposed approach in respect of voyages between the UK mainland and the Crown Dependencies?

14. Other Domestic Legislation

There are a total of six pieces of domestic secondary legislation currently on the UK statute book. It is proposed that this package of legislation is streamlined when the UK implements the EU Regulation and ratifies the 2002 Protocol. Such simplification would be consistent with the Government's drive for better regulation and the streamlining of maritime legislation as part of the Government's Red Tape Challenge.

It is proposed that the Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980 and the Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1980 be revoked.

These regulations are no longer necessary because further provision was made in respect of the application of the Athens Convention to domestic carriage by the Carriage of Passengers and the Luggage by Sea (Domestic Carriage) Order 1987. Whilst the 1987 Order applies to contracts made on or after 30 April 1987, the 1980 Interim Orders would only apply to a contract made between 1 January 1981 and the 30 April 1987. We believe that the likelihood of a relevant case being brought 25 years afterwards is extremely remote.

It is also proposed that the Carriage of Passengers and their Luggage by Sea (Parties to Convention) Order 1987 be revoked. The purpose of this Order was to provide a mechanism to inform interested parties that a State had ratified or acceded to the Athens Convention. This Order is however now out of date. A number of States have become Party to the Athens Convention after 18 May 1987 and up to date information is available from the IMO website (see www.imo.org).

The remaining pieces of domestic secondary legislation will continue to apply to the carriage at sea of passengers on domestic voyages including the carriage at sea of passenger's onboard ships of EU Class A (until 31 December 2016) and EU Class B (until 31 December 2018):

- the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987,;
- the Carriage of Passengers and their Luggage by Sea (Notice) Order 1987;
- the Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998.

Certain provisions within each of these Orders will continue to serve a purpose. It is, however, considered appropriate to simplify the legislation by amalgamating relevant the relevant provisions in a new Order or by including the provisions in the Order that modifies Schedule 6 of the Merchant Shipping Act.

Question 13: Do you agree with the proposed approach in respect of the other domestic secondary legislation relevant to the carriage of passengers at sea, in the UK?

15. Impact Assessment

The Impact Assessment (attached at **Annex C**) to this consultation document sets out the available evidence on the costs and benefits of the proposed Regulations that we have identified. When responding to the consultation, you are encouraged to provide any additional evidence relating to the costs and benefits associated with the three policy options that have been assessed. Any additional evidence that is provided will be taken into account when the impact assessment is updated following the consultation.

Question 14: Are you able to provide any additional evidence relating to the costs and benefits associated with the proposed Regulations? *Please pay particular attention to the more detailed comments in sections 7,8 and 9 of the accompanying Impact Assessment.*

Please also suggest any alternative methods for reaching the objectives and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

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 **28 September 2012**. If you would like further copies of this consultation document it can be found at www.dft.gov.uk or you can contact Andrew Angel if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to

Andrew Angel
Zone 2/29
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 0207 944 5452
Fax: 0207 944 2168
E-mail address: 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 those consulted is attached at **Annex D**. If you have any suggestions of others who may wish to be involved in this process please contact us.

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 Department.

The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Questions

When formulating a response to this consultation, it would be helpful if consideration could be given to the following questions.

1. Do you agree with the Governments 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 on board ships of Class A and B from 31 December 2016 and 31 December 2018 respectively?
2. Do you agree with the Governments preferred approach to apply the EU Regulation to carriage by sea within the UK on board ships of Class A and B only?
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?

4. Do you agree that the UK is right to not to adopt a higher national limit of liability than the 400,000 units of account prescribed in Article 7 of the 2002 Protocol?
5. Do you agree with the Governments 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)?
6. Do you agree with the UK's proposal to remove from UK law the owner of a passenger ships' right to limit liability under LLMC in respect of claims arising from loss of life or personal injury to passengers of a seagoing ship?
7. Do you agree that the criteria the UK are proposing to use when considering whether to issue a State certificate are fair and proportionate?
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**?
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?
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 requirements at present? Is it appropriate to specify certain provisions on the ticket itself?
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?
12. Do you agree with the proposed approach in respect of voyages between the UK mainland and the Crown Dependencies?
13. Do you agree with the proposed approach in respect of the other domestic secondary legislation relevant to the carriage of passengers at sea, in the UK?
14. Are you able to provide any additional evidence relating to the costs and benefits associated with the proposed Regulations?

The Consultation Process

This consultation is being conducted in line with the Government's key consultation principles which are set out in **Appendix 4**. Further information is available on the Better Regulation Executive website at <https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

What will happen next?

A summary of responses, including the next steps will be published by [...] on www.dft.gov.uk, paper copies will be available on request.

Question and Answer Brief

Below is a list of questions about the implementation of the EU Regulation and UK ratification of the 2002 Protocol. The answers are set out immediately below each question.

Q1. How many States are currently Contracting Parties to the 2002 Protocol to the Athens Convention?

To date 8 States (Albania, Belize, Latvia, Palau, Serbia, Denmark, 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.

Q2: What are the main benefits of the 2002 Protocol?

The 2002 Protocol will amend the Athens Convention and will:

- Introduce higher liability limits on carriers (from approximately £45,000 to £400,000 per passenger per carriage);
- Require the carrier to provide evidence of insurance up to approximately £250,000 per passenger on the basis of strict liability;
- Require 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 in the UK);
- Introduce the right of direct action against the insurer up to approximately £250,000; &
- Change the time bar provisions i.e. the amount of time that is allowed to pass after an incident has happened before any action for damages has to be brought before a court of law.

Q3. Will the 2002 Protocol provide compensation in other circumstances, such as delay or cancellation to a service?

No, EU Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway will apply in these circumstances from 18 December 2012.

Q4. When will EU Regulation apply?

The EU Regulation will apply from 31 December 2012 for ships on international carriage. It is however proposed that it will apply to the carriage at sea of passengers on domestic

voyages onboard ships of EU Class A and Class B in the UK from 31 December 2016 and 2018 respectively.

Q5. What will happen if the EU Regulation applies and the 2002 Protocol is not in force internationally?

From the perspective of a passenger travelling between two Member States in the EU there will be no practical difference if the 2002 Protocol is not in force internationally on the 31 December 2012. The EU Regulation will apply the provisions of the 2002 Protocol on a regional (EU) basis and non-EU passenger ships will need to have compulsory insurance and a State certificate to call at a port in the EU. Passenger ships registered in the EU will need to have compulsory insurance and a State certificate wherever they may be. There are some technical issues to be resolved but Member States are preparing for this possibility to ensure that there is no impact on shipping movements.

Q6: Does the EU Regulation introduce any provisions which are not in the 2002 Protocol?

Yes, the EU Regulation introduces a number of supplementary measures intended to further enhance the provision of compensation to passengers including the payment of compensation in respect of mobility equipment and where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier shall make an advanced payment of not less than €21,000 to cover any immediate economic needs.

Q7: Will the original 1974 Athens Convention still have effect in the UK?

Yes. While the 2002 Protocol (introduced directly into UK law, by the EU Regulation will apply from 31 December 2012 to international carriage and domestic carriage onboard seagoing passenger ships of EU Class A (from 31 December 2016) and EU Class B (from 31 December 2018), the 1974 Athens Convention will continue to apply to contracts for the carriage of passengers and their luggage onboard other seagoing services.

Q8: Will the 2002 Protocol and/or the EU Regulation apply to the Crown Dependencies and the Overseas Territories?

The EU Regulation is directly applicable to Gibraltar. Discussions are ongoing with the Overseas Territories of Pitcairn and Saint. Helena, both of whom have expressed an interest in applying the 2002 Protocol. The UK is also currently engaged with the Crown Dependencies (i.e. the Channel Islands and the Isle of Man) and the intention is to extend the 2002 Protocol to them when they have their own legislation in place.

Q9: Will the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 apply to Northern Ireland and Scotland?

Yes. The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 will apply to the whole of the United Kingdom.

Q10: Where do I go for further advice and information on my rights?

Whilst the carrier and the insurer are, in the event of an incident, likely to appoint a claims assessor to help passengers/claimants to process claims, it is strongly advised that an individual seeks independent legal advice if they feel that they have a claim. A local legal

adviser can be found by searching the Ministry of Justice website, at: <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do> or by contacting the Association of Personal Injury Lawyers, see: <http://www.apil.org.uk/>.

If you still have questions after you have read this section please contact;

Andrew Angel
Zone 2/29
Great Minster House
33 Horseferry Road
London, SW1P 4DR

Tel: 0207 944 5452

E-mail address: andrew.angel@dft.gsi.gov.uk

Appendix 1: UK Seagoing Passenger Ships - EU Class A and B

Name of Ship	EU Class	To	From
Hamnavoe	A	Scrabster	Stromness (Orkney)
Hjaltland	A	Aberdeen	Lerwick (Shetland) via Kirkwall (Orkney)
Hrossey	A	Aberdeen	Lerwick (Shetland) via Kirkwall (Orkney)
Stena Caledonia	A	Currently laid up	Currently laid up
Balmoral	B	Various - cruise	Various - cruise
Caledonian Isles	B	Ardrossan	Brodick (Isle of Arran)
Clansman	B	Oban	Various – inner and outer Hebrides
Coruisk	B	Mallaig	Armada (Isle of Skye)
Dagalien	B	Toft (Shetland)	Ulsta (Isle of Yell)
Daggri	B	Toft (Shetland)	Ulsta (Isle of Yell)
Earl Sigurd	B	Kirkwall (Orkney)	Outer North Isles (Orkney)
Earl Thorfinn	B	Kirkwall (Orkney)	Outer North Isles (Orkney)
Filla	B	Lerwick (Shetland)	Skerries (Shetland)
Hebridean Isles	B	Kennacraig	Port Ellen / Port Askaig (Islay)
Hebrides	B	Uig (Isle of Skye)	Tarbert / Lochmaddy (Outer Hebrides)
Isle Of Arran	B	Kennacraig	Port Ellen / Port Askaig (Islay)
Isle Of Lewis	B	Ullapool	Stornoway (Isle of Lewis)
Isle Of Mull	B	Oban	Craignure (Isle of Mull)
Linga	B	Laxo (Shetland)	Whalsay (Shetland)
Loch Portain	B	Leverburgh (Harris, Outer Hebrides)	Berneray (North Uist, Outer Hebrides)
Loch Nevis	B	Mallaig	Inner Hebrides
Lord Of The Glens	B	Various - cruise	Various - cruise
Lord Of The Isles	B	Oban	Various – inner and outer Hebrides
Pentalina	B	Gills Bay	St Margaret's Hope (Orkney)
Rathlin Express	B	Ballycastle (N. Ireland)	Rathlin Island
Saturn	B	Ardrossan	Brodick (Isle of Arran)
SD Omagh	B	Various – marine services	Various – marine services
SD Oronsay	B	Various – marine services	Various – marine services
Stena Voyager	B	Currently laid up	Currently laid up
Varagen	B	Kirkwall (Orkney)	Outer North Isles (Orkney)
Waverley	B	Various - cruise	Various - cruise

Appendix 2:

UK criteria¹¹ for accepting certificates of insurance or other financial security (“non-war”) in respect of liability for the death of and personal injury to passengers

- (i) Adequate documentation confirming the insurer(s) financial standing and solvency. Adequate documentation could be in the form of audited financial statements from the last three years, duly authenticated and signed by the auditor;
- (ii) Adequate documentation demonstrating that the insurer(s) are authorised to carry out insurance business in the European Union;
- (iii) Adequate documentation demonstrating that the insurer(s) have the necessary capital (with the backing of reinsurance if applicable) to cover claims for any liability incurred under the 2002 Protocol to the Athens Convention;
- (iv) A statement to the effect that liability cover for the (“non-war”) compulsory insurance under the Athens Convention shall be issued in accordance with the 2002 Protocol to the Athens Convention and a guarantee by the insurer and its parent company, if one exists, that the limit of the (“non-war”) compulsory insurance will not be lower than the limit prescribed in the 2002 Protocol to the Athens Convention;
- (v) A one-off undertaking by either the shipowner or the insurer to provide cover, if necessary, for compensation for the replacement of mobility equipment as set out in Article 4 of the Regulation (EC) 392/2009 and facilitate the provision of an advance payment to cover the immediate economic needs of a passenger as envisaged by Article 6 of the same Regulation; and
- (vi) That the insurer’s hold a minimum of a grade A- or equivalent rating by a credit rating agency registered in accordance with Regulation (EC)1060/2009¹² on credit rating agencies.

The above criteria only apply to protection and indemnity (“P&I”) insurance provided by a P&I Club outside the framework of the International Group¹³.

¹¹ These criteria are a guide; the Secretary of State reserves the right to consider each application on a case by case basis.

¹² Regulation (EC) 1060/2009 on Credit Rating Agencies (OJ L.302, 17.11.2009, p. 1)

¹³ See www.igpandi.org/Group+Clubs for a list of P&I Clubs inside the framework of the International Group

UK criteria¹⁴ for accepting certificates of insurance or other financial security (“war”) in respect of liability for the death of and personal injury to passengers

- (i) Adequate documentation confirming the insurer’s financial standing and solvency. Adequate documentation could be in the form of audited financial statements from the last three years, duly authenticated and signed by the auditor;
- (ii) Adequate documentation demonstrating that insurer(s) are authorised to carry out insurance business in the European Union;
- (iii) Adequate documentation demonstrating that the insurer(s) have the necessary capital (with the backing of reinsurance if applicable) to cover claims for liability incurred under the International Maritime Organization’s (IMO) Reservation and Guidelines for Implementation of the Athens Convention;
- (iv) A statement to the effect that liability cover for war insurance under the Athens Convention shall be issued in accordance with the IMO’s Reservation and Guidelines for Implementation of the Athens Convention and a guarantee by the insurer and its parent company, if one exists, that the limit of compulsory war insurance will not be lower than the limit prescribed in the IMO’s Reservation and Guidelines for Implementation of the Athens Convention; and
- (v) That the insurance company and/or its reinsurers hold a minimum of a grade A- or equivalent rating by a credit rating agency registered in accordance with Regulation (EC) 1060/2009 on credit rating agencies.

The above criteria only apply to protection and indemnity (“P&I”) insurance provided by a P&I Club outside the framework of the International Group¹⁵.

¹⁴ These criteria are a guide; the Secretary of State reserves the right to consider each application on a case by case basis.

¹⁵ See www.igpandi.org/Group+Clubs for a list of P&I Clubs inside the framework of the International Group

Appendix 3: State Certification Scenarios

It is UK policy to issue and/or accept a *single* certificate of insurance to cover the UK's obligations under Regulation (EC) 392/2009 and the 2002 Protocol to the Athens Convention. This is because the compulsory insurance obligations under both instruments are identical. The UK will not however issue or accept a single certificate of insurance in all circumstances. The policy set out below considers a number of different scenarios.

Scenario 1: This assumes that Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents applies in the UK, that the UK has ratified the 2002 Protocol to the Athens Convention ("the 2002 Protocol) and that the 2002 Protocol is in force internationally.

UK Flag State responsibilities (1)

Scenario	Destination of ship				
	Domestic Port	EU Port		International Port – non EU	
		State Party	State Party	Non State Party	State Party
1					
2					
3					
4					
5					

UK Flag 1: Ship registered in the UK calls into a UK port;

UK Flag 2: Ship registered in the UK calls into an EU port in a State Party to the 2002 Protocol;

UK Flag 3: Ship registered in the UK calls into an EU port in a State **not** Party to the 2002 Protocol;

UK Flag 4: Ship registered in the UK calls into an international port in a State Party to the 2002 Protocol;

UK Flag 5: Ship registered in the UK calls into an international port in a State **not** Party to the 2002 Protocol;

UK ships will be issued with a single certificate of insurance (covering the obligations of the both the EU Regulation and the 2002 Protocol) by the UK's Maritime and Coastguard Agency on the basis that insurance undertakings for both war and non- war are satisfactorily provided.

Scenario 2: This assumes that Regulation (EC) 392/2009 applies in the UK, the UK has **not** ratified the 2002 Protocol but the 2002 Protocol is in force internationally.

UK Flag State responsibilities (2)

Scenario	Destination of ship				
	Domestic Port	EU Port		International Port – non EU	
		Non State Party	State Party	Non State Party	State Party
1					
2					
3					
4					
5					

UK Flag I: Ship registered in the UK calls into a UK port;

UK Flag II: Ship registered in the UK calls into an EU port in a State Party to the 2002 Protocol;

UK Flag III: Ship registered in the UK calls into an EU port in a State **not** Party to the 2002 Protocol;

UK Flag IV: Ship registered in the UK calls into an international port in a State Party to the 2002 Protocol;

UK Flag V: Ship registered in the UK calls into an international port in a State **not** Party to the 2002 Protocol;

The UK's Maritime and Coastguard Agency will issue a certificate of insurance (covering the obligations of Regulation (EC) 392/2009) to UK ships irrespective of their intended destination, on the basis that insurance undertakings for both war and non-war are satisfactorily provided. However to avoid potential Port State Control difficulties ships seeking to call into an international (non-EU) port within a State Party to the 2002 Protocol should obtain an additional certificate of insurance from a State Party to the 2002 Protocol.

Scenario 3: This assumes that Regulation (EC) 392/2009 applies in the UK, the UK has ratified the 2002 Protocol and the 2002 Protocol is in force internationally.

UK Port State responsibilities (1):

Scenario	Flag State of ship				
	UK	EU		International – non EU	
	State Party	State Party	Non State Party	State Party	Non State Party
1					
2					
3					
4					
5					

UK Port 1: Ship registered in the UK calls into a UK port;

UK Port 2: Ship registered in an EU State Party to the 2002 Protocol calls into a UK port;

UK Port 3: Ship registered in an EU State **not** Party to the 2002 Protocol calls into a UK port;

UK Port 4: Ship registered in an international State Party to the 2002 Protocol calls into a UK port;

UK Port 5: Ship registered in an international State **not** Party to the 2002 Protocol calls into a UK port;

The UK would accept a single certificate of insurance issued by the flag State of an EU ship if that ship wanted to call into a UK port, irrespective of whether or not the EU State was Party to the 2002 Protocol. The UK would also accept a single certificate of insurance issued by the flag State of a ship registered to an international (non-EU) State if that State was a Party to 2002 Protocol. The UK would not however accept a single certificate of insurance issued on behalf of a ship registered to an international (non EU) State that was not Party to the 2002 Protocol by an EU State that was also not Party to the 2002 Protocol. In this scenario, the UK would only accept a certificate issued by a State that was Party to 2002 Protocol.

Scenario 4: This assumes that the EU Regulation applies in the UK, the UK has **not** ratified the 2002 Protocol but the 2002 Protocol is in force internationally.

UK Port State responsibilities (2):

Scenario	Flag State of ship				
	UK	EU		International – non EU	
	Non State Party	State Party	Non State Party	State Party	Non State Party
1					
2					
3					
4					
5					

UK Port I: Ship registered in the UK calls into a UK port;

UK Port II: Ship registered in an EU State Party to the 2002 Protocol calls into a UK port;

UK Port III: Ship registered in an EU State **not** Party to the 2002 Protocol calls into a UK port;

UK Port IV: Ship registered in an international State Party to the 2002 Protocol calls into a UK port;

UK Port V: Ship registered in an international State **not** Party to the 2002 Protocol calls into a UK port;

The UK would accept a single certificate of insurance issued by the flag State of an EU ship if that ship wanted to call into a UK port, irrespective of whether or not the EU State was Party to the 2002 Protocol. The UK would also accept a single certificate of insurance issued by the flag State of a ship registered to an international (non-EU) State if that State was a Party to 2002 Protocol on the basis that it covered the obligations of Regulation (EC) 392/2009. In addition, the UK would also accept a single certificate of insurance issued on behalf of a ship registered to an international (non-EU) State that was not Party to the 2002 Protocol by an EU State that was not Party to the 2002 Protocol on the basis that it covered the obligations of the EU Regulation.

Appendix 4: The Government's Key Consultation Principles

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected