

De Minimis Assessment (DMA)

Title: [The Merchant Shipping (Passenger Ships on Domestic Voyages) (Miscellaneous Amendment) Regulations 2019]

Date: 05/06/2019

DMA No: [Click here to enter text.](#)

Lead department or agency: Maritime and Coastguard Agency

Other departments or agencies: Department for Transport

Stage: Consultation

Source of intervention: European

Type of measure: Secondary

Contact for enquiries: Stuart Hannam/Richard Bone

Summary: Rationale and Options

Total Net Present Value

£0.13m

Business Net Present Value

£0.13m

Net cost to business per year

(EANDCB in 2014 prices)

-£0.01m

Rationale for intervention and intended outcomes

Intervention is necessary to transpose Directive (EU) 2017/2108 (amending Directive 2009/45/EC) on safety rules and standards for passenger ships. This directive comprises updates and clarifications to references and procedures rather than changes to technical safety requirements. In addition to removing some duplications and ambiguities, these amendments bring the directive more in line with the layout and language of SOLAS¹, on which its safety requirements are based. The UK's seagoing domestic fleet comprises some scope 75 ships, 32 of which are covered by an existing Equivalency Arrangement, and are unaffected by the directive. 43 ships would be affected, of which for 8 there would be potential benefits and the remaining 35 no costs or benefits. These figures are taken from the MCA's records of passenger ship certificates issued.

Describe the policy options considered

1. Do nothing. This is not considered a beneficial option because certain amendments in Directive 2017/2108 (which the UK negotiated for), including the removal of ships below 24m length from the directive's scope, may be beneficial to UK industry. Under "Do Nothing", such ships remain within its scope.
2. Encourage voluntary application. This is not legally viable because beneficial changes in the amending directive, particularly the removal of ships of under 24m length from scope, cannot be given effect without the necessary change to UK law.
3. Transpose Directive 2017/2108. This is the MCA's preferred option. It will allow smaller ships to be removed from scope of the directive, and covered by a more appropriate and proportionate national regime, potentially saving UK operator costs. In addition, certain other clarifications which the UK negotiated for, such as the exclusion of sailing ships, can also be given effect.

Rationale for DMA rating

The additional impacts arising from the amendments introduced by Directive 2017/2108 are estimated to be well under £5 million. A potential benefit arises from ships below 24m length being excluded from the amended directive's scope. Currently, there are eight such ships operating around the UK. The annual benefit to these vessels is estimated as equivalent to £10k. For vessels yet to be built the total annual benefit is estimated at £3k p/y. The total impact on business is estimated to be £13k p/y, or a present value over 10 years of £126k.

Will the policy be reviewed? Yes

If applicable, set review date:

Are these organisations in scope?

Micro
Yes

Small
Yes

Medium
Yes

Large
Yes

Senior Policy Sign-off:

Date:

DD/MM/YYYY

Peer Review Sign-off:

Date:

DD/MM/YYYY

Better Regulation Unit Sign-off:

Date:

DD/MM/YYYY

¹ SOLAS is the official acronym for the International Convention for the Safety Of Life At Sea.

Supporting evidence

1. Rationale for Intervention and Intended Objectives

Since 2015, the European Commission has reviewed numerous items of EU legislation under its Regulatory Fitness and Performance (REFIT) programme. REFIT is part of the Commission's current better regulation agenda, and aims to ensure that EU laws deliver their intended benefits for citizens, businesses and society while removing red tape and lowering costs. It also aims to make EU laws simpler and easier to understand.

The result of the REFIT exercise being carried out on Directive 2009/45/EC on safety rules and standards for passenger ships is amending directive (EU) 2017/2108. Directive 2009/45 applies only to seagoing domestic passenger ships. These are ships that:-

- carry more than 12 passengers;
- go to sea; but,
- only undertake non-international voyages, back to the same port, or to a different port, within the same EU Member State.

The UK has now left the EU and is currently in a transitional period until the 31st December 2020. However, the UK Government is supportive of the proportionate measures this legislation brings to the Domestic Passenger fleet.

This amendments in directive 2017/2108 comprise mainly updates, clarifications and improvements to layout. There is however one important, substantive change to the technical safety requirements; the removal of ships below 24m length from scope of the directive. As the requirements in (the substantive) directive 2009/45 are underpinned by UK legislation, intervention is necessary to transpose directive 2017/2108 so that this amendment can be reflected, and any benefits that it represents made available to UK industry.

The UK's seagoing domestic fleet currently comprises some 75 ships, of which:-

- eight are under 24m in length;
- 32 older vessels are covered by an existing Equivalency Arrangement (described below), and are unaffected by the directive; and,
- 35 continue to be subject to directive 2009/45.

Due to their removal from the directive's scope, there are potential benefits for the **eight** ships under 24 metres length, particularly with regard to the carriage of Life Saving Appliances (LSA).

Some 35 UK ships therefore remain within the scope of Directive 2009/45/EC. There are no substantive changes to the requirements that apply to them, so no extra compliance costs are expected to arise.

The above figures have been taken from the MCA's passenger ship safety certification records.

In fact, the number of ships actually covered by the Directive will be fewer than 35 because a few of the larger ferries that are certificated to international standards, as explained below, are consequently not subject to the Directive.

2. Options Considered

Do nothing – This is not considered a desirable option, chiefly because UK ships of under 24m length will continue to be covered by current UK legislation, and thus the requirements of Directive 2009/45/EC prior to its amendment by 2017/2108. Additionally, some other important exclusions from the directive's scope, which the UK actively negotiated for, will not be clarified under UK law. These include sailing vessels, offshore supply vessels and tenders.

Transpose amending Directive (EU) 2017/2108 (the MCA's preferred option) – This option is considered to be the best one for UK industry at this time. Additional compliance costs for ships of 24m or more in length are estimated to be negligible. Ships of under 24m length will no longer have to comply with the EU requirements, or operate under the UK's equivalence arrangement (see 3 below), and can instead

comply with bespoke domestic standards. These are already available in the UK's Small Seagoing Passenger Ship (SSPS) Code.

A comparison has been carried out between the safety requirements of the Directive, and those of the SSPS Code. Apart from carriage requirements for Life Saving Appliances (LSA), which are more onerous in the Directive, there is a moderately high degree of equivalence between these two regimes. Where divergences do occur, they may be attributed to the fact that the Directive applies to much larger ships than the SSPS Code.

3. Business Impact and DMA Classification

We believe that a DMA is appropriate in this case because the economic impacts on UK businesses will amount to well below £5m. In addition, none of the following effects are envisaged:-

- significant distributional impacts (such as significant transfers between different businesses or sectors);
- disproportionate burdens on small businesses;
- significant gross effects despite small net impacts;
- significant wider social, environmental, financial or economic impacts; or,
- significant novel or contentious elements.

There are some 75 UK seagoing domestic passenger ships in operation of which several (chiefly large Scottish ferries) are certificated to international standards, and do not therefore count as domestic passenger ships for the purposes of this DMA. The reason for these ships having international certification is that, under the Directive, they would be Class A ships, and have to comply with the full international safety requirements under the relevant conventions. With Class A certification under the Directive however, they would be restricted to domestic (non-international) voyages. It is therefore commercially worthwhile for them take the comparatively small step to certification for international voyages as this gives these ships greater operational flexibility, as well as making them much more viable for selling on at a later time, on the international maritime market.

At the opposite end of the scale, some 32 of the 75 UK seagoing domestic passenger ships operate under an Equivalency Arrangement that was agreed with the European Commission during the UK's implementation of the original directive on seagoing domestic passenger ships, 1998/18/EC. This arrangement enabled eligible older ships (including numerous trip boats) to continue operating under their UK classes and associated UK safety regulations. These requirements, together with certain operational restrictions in most cases, were accepted as achieving an equivalent level of safety to the Directive. Typically, such restrictions might limit a ship to operation within daylight hours, or within a certain distance from the coast or home port.

These equivalence ships, and those with full international certification, will continue to be unaffected by the Directive (on the assumption that their operations continue on the current bases).

Eight vessels are under 24m in length and will be removed from the scope of the Directive, and will instead be required to comply with the UK's Small Seagoing Passenger Ship (SSPS) Code.

For the remaining 35 vessels, Directive (EU) 2017/2108 introduces no substantive changes to the technical safety requirements set out in Annex 1 of Directive 2009/45/EC (as previously amended). It does introduce numerous clarifications of existing requirements, and updates to various references, usually to international conventions. These changes simply bring the directive requirements more in line with corresponding requirements for passenger ships on international voyages, in SOLAS. Cost implications are negligible for industry and Administrations.

Possible savings for ships under 24m in length

Because of the complex way in which ship design and construction costs arise, and the variable factors that can influence them, it is extremely difficult to ascertain the actual savings that would occur with a newbuild ship less than 24m in length. This is largely because of the following factors

- Any savings related to the way in which the ship is constructed will arise at the design and construction stages, be integrated into the ship's overall cost, and attempting to identify and extract them from that cost will be quite disproportionate to the amount/s involved.

- Ship constructions costs relating to materials, components and labour are influenced by economic fluctuations generally and within the industry.

It must also be borne in mind that, at present, the UK SSPS Code applies only to non-steel (or equivalent) ships; those of steel or equivalent are currently covered by the Directive. This will only change with the implementation of amending directive 2017/2108, in December 2019.

One set of safety requirements for which savings that might arise for a ship of under 24m, complying with the SSPS Code rather than the Directive, can be monetised that for is Life Saving Appliances (LSA), for which an indicative list of possible savings is given below. It is not anticipated that the risk to passengers or crew will be materially affected as the SPSS code requirements are appropriate and proportionate for the vessels moving into its scope.

LSA Item	SSPS Code Requirements
Lifebuoys	4 compared to 8 under the Directive (for Class B ship) <i>Indicative saving 4 x £50 = £200</i>
Immersion Suits	0 compared to 3 under the Directive <i>3 @ (indicative saving of) £250 = £750</i>
Rescue Boat	Not required under SSPS Code if adequate alternative means of recovery, but required under the Directive. <i>indicative saving of £5500</i>
Hand-held VHF radios	2 compared to 3 under the Directive <i>1 VHF set = indicative saving of £150</i>
Total indicative LSA saving	£6600

Source: Average prices found from a range of suppliers during market research

Existing Vessels

£6,600 represents the maximum possible saving for an existing vessel, if all of their LSA was due for renewal in the first year. The maximum possible saving for the eight existing vessels that are falling out of scope of the Directive is therefore £52,800 in one year. Assuming that equipment requires replacement every five years means that there would be a £52,800 benefit in years 1 and 6. This is equivalent to a present value over ten years of £97k, or an equivalent annual benefit to business of £10k.

Future New Build Vessels

Future collective savings for ships under 24m will depend on how many of them are constructed after 21 December 2019, under the requirements of the SSPS Code. Of the vessels falling out of scope of the Directive, seven have been built in the past twenty years, implying an average rate of one equivalent vessel built every three years. It is not known how many vessels of this type have been scrapped over the period, but vessels have a useful life of several decades so it not thought to be a material consideration. Assuming that an average of 0.35 vessels are constructed each year that would benefit from the £6,600 cost savings in their first and sixth year following construction, as outlined above, which is also assumed to be constant in real prices. This implies annual savings of £2,310 in years 1-5 and £4,620 years 6-10, equivalent to a present value over 10 years of £29k, or a £3k per year equivalent annual benefit to business. The benefits increase in later years because each vessel benefits once every five years because of the timeframe for replacing equipment; vessels built in year 1 would benefit in year 6, as well as vessels built in year 6.

Total Monetised Benefits

Totalling the benefits to the two groups of businesses above gives a total present value net benefit of £126k and an equivalent annual benefit to business of £13k.

4. Risks and Assumptions

Risks

- 1) That the safety standards on ships covered by the UK Equivalency Arrangement will fall progressively behind those on ships that comply with the directive requirements on the one hand (ships of 24m length and above), or the SSPS Code on the other (ships under 24m length).

- 2) That UK operators in areas such as the Isles of Scilly and Scottish Western Isles may continue to be disadvantaged by the Significant Wave Height criteria laid down in the directive. (Whilst the UK considers these criteria to be flawed, and opposed them in negotiations, they continue to feature in the directive.)

Assumptions

- 1) That out of some 75 UK domestic seagoing passenger ships identified, only 35 are expected to be bound by the provisions in the Directive, as the remainder either fall under the UK equivalency arrangement, or are below 24m in length and are now excluded from the scope of Directive 2009/45/EC. Even if all 75 vessels are able to reduce their spending on life saving appliances by £6,600 (as estimated in the benefits section), the impact is £0.5m per year, still significantly below the £5m per year net impact threshold for a measure’s qualification for using the De Minimis Assessment process.
- 2) That operators of ships that are exempt from the directive, by being covered by the UK equivalency arrangement, will wish to continue operating on that basis, for as long as they can, rather than complying with the directive requirements.
- 3) That the small number of ships (large ferries) which would be Class A under the directive but are certificated to international passenger ship standards, will continue to operate on that basis, and therefore be unaffected.

5. Wider Considerations

As this directive concerns safety standards, it applies to all applicable business regardless of size. As mentioned previously however, no significant compliance costs are generated by amending Directive (EU) 2017/2108 as its main purpose is to provide clarification of existing requirements, and remove duplications (in accordance with the REFIT programme). For smaller operators running ships that are below 24m in length there is a potential benefit from such ships have been removed from the directive’s scope. They do not have to comply with its requirements, and can instead comply with the UK SSPS Code. Ships operating under the UK Equivalency agreement will be unaffected as explained above.

6. Post-Implementation Review Plan

1. **Review status:** Please classify with an ‘x’ and provide any explanations below.

	Sunset clause		Other review clause		Political commitment		Other reason	X	No plan to review
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2. **Expected review date** (month and year):

X	X	/	X	X
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Rationale for not conducting a PIR

It is not considered that a Post-Implementation Review (PIR) will be appropriate for this particular SI. A PIR would not serve any purpose because, apart from the removal from scope of ships less than 24m in length, Directive (EU) 2017/2108 contains non-substantive amendments to Directive 2009/45/EC, the purpose of which is to update references (i.e. to international conventions) within the existing technical safety requirements, and remove duplications. The 2017 directive makes no material changes to those requirements.

A PIR requirement on the overall regime (of Directive 2009/45/EC) is already required under regulation 11 of the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000 {SI 2000/2687}. This was introduced by the Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012 {SI 2012/2636}, which transposed amending directive 2010/36/EU. A PIR was undertaken in accordance with that in 2017, and one will be due again in 2022.

ANNEX 1

Background

EU wide safety rules and standards for seagoing domestic passenger ships were first introduced by Directive 1998/18/EC. This established consistent harmonised safety standards across the EU, for passenger ships and High Speed Craft operating seagoing domestic services. The standards are based on the requirements developed and adopted in respect of passenger ships on international voyages, under SOLAS². These requirements have been scaled so as to make them relevant and proportionate to seagoing domestic passenger ships. Directive 1998/18/EC was transposed into the UK law by The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000.

Subsequent amendments to the 1998 directive introduced changes to reflect relevant amendments to international SOLAS requirements, again scaled to passenger ships on domestic voyages. Directive 2009/45/EC on Safety Rules and Standards for Passenger Ships replaced the previous directives in a recast format. This has in turn been amended three times, most recently by (EU) 2017/2108³.

Directive (EU) 2017/2108 is the latest amendment to Directive 2009/45/EC "...on safety rules and standards for passenger ships". It affects seagoing domestic passenger ships. These are ships that:-

- carry more than 12 passengers;
- go to sea; but,
- only undertake non-international voyages, back to the same port, or to a different port, within the same EU Member State.

This directive does not therefore apply to passenger ships that undertake international voyages, or those that do not go to sea.

The purpose of these standards is to maintain a high level of safety and to remove barriers to trade, facilitating the EU single market in the provision of ships and services by ensuring a consistent standard of safety across all EU domestic passenger ships. The periodic amendments have aimed to keep the directive standards up-to-date with the international ones on which they are based.

The UK was robustly active in negotiations on the post-REFIT amendments included in amending Directive 2017/2108. Most importantly, the UK was successful in achieving the removal of ships of less than 24m in length from the scope of the directive. This represents a potential benefit for such ships in the UK, of which there are currently eight. Ships less than 24m can be covered by more fitting and proportionate national requirements⁴.

We also welcomed the agreements that: aluminium continues to be regarded as equivalent to steel, so remains within scope of the directive; and ship board tenders, sailing ships and ships carrying offshore personnel were excluded specifically from the scope of the directive.

Ships under 24m in length may in future be covered by the UK Small Seagoing Passenger Ship (SSPS) Code, which has more appropriate and proportionate requirements for smaller ships on domestic voyages. Currently, this Code applies only to under 24m seagoing domestic passenger ships constructed of materials other than steel or equivalent (i.e. aluminium) because ships of steel or equivalent are covered by the Directive. With the implementation of amending directive 2017/2108, application of the SSPS Code can be extended to cover steel or equivalent ships under 24m in length as they will no longer covered by the Directive (2009/45). This situation represents a potential benefit for such ships in the UK, and may help to stimulate the construction of further newbuilds.

² SOLAS is the official acronym for the International Convention on the Safety Of Life At Sea.

³ Transposed by The Merchant Shipping (Safety Rules and Standards for Passenger Ships) (Miscellaneous Amendments) Regulations 2018.

⁴ The UK Small Seagoing Passenger Ship (SSPS) Code, published by the MCA in 2015.