

<b>Title:</b> The Merchant Shipping (Convention Relating to the Carriage of Passengers and their Luggage by Sea) (Amendment) Order 2014  <b>IA No:</b> DfT00242  <b>Lead department or agency:</b> Department for Transport  <b>Other departments or agencies:</b> Maritime and Coastguard Agency	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 8/11/2013				
	<b>Stage:</b> Final				
	<b>Source of intervention:</b> EU				
	<b>Type of measure:</b> Secondary legislation				
<b>Contact for enquiries:</b> andrew.kelly@dft.gsi.gov.uk 0207 944 5425					
<b>Summary: Intervention and Options</b>					<b>RPC: Cleared ("Green")</b>

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?	
NQ	NQ	NQ	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

There is a need to ensure that the framework for providing compensation to passengers carried by sea in the event of death or personal injury is effective and provides prompt, adequate compensation. The 2002 Protocol to the Athens Convention will strengthen the international regime, and, although the key provisions of the Protocol have been introduced into EU law (EU Regulation 392/2009 from 31 December 2012, which the UK has already implemented), the requirements of two Council Decisions (2012/22/EU and 2012/23/EU) necessitate further government intervention to ratify the 2002 Protocol. This will be achieved by amending UK legislation to incorporate the international elements of the Protocol itself, and to revoke some related domestic legislation identified as being redundant as part of the Red Tape Challenge.

**What are the policy objectives and the intended effects?**

The first policy objective is for the UK to ratify the 2002 Protocol. This will not only ensure that UK-flagged passenger vessels can be issued with the correct international certification, but it will also enable the 2002 Protocol to be extended to the Overseas Territories and Crown Dependencies should they so wish – which, if they chose to do so, would enhance the protection that is available to passengers travelling on board vessels which are flagged to the Overseas Territories and Crown Dependencies when travelling on international (non-EU) journeys.

The second policy objective is to respect a Red Tape Challenge commitment by revoking some redundant legislation.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The 'Do Nothing' scenario is the baseline against which the policy options are assessed. Only one other policy option has been assessed in this Impact Assessment, which is to make the necessary changes to UK legislation to enable the UK to ratify the 2002 Protocol and revoke the completely redundant legislation. No non-legislative option is open, given that the objectives are to ratify the 2002 Protocol and to respect a Red Tape Challenge commitment by revoking some redundant legislation.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 08/2018					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA		<b>Non-traded:</b> NA

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister: \_\_\_\_\_ Stephen Hammond Date: 11/11/2013

# SUMMARY: Analysis & Evidence

# Policy Option 1

## Description:

Make the necessary changes to UK legislation to enable the UK to ratify the 2002 Protocol and revoke the completely redundant legislation

## FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	NA	NA	NQ	NQ
High	NA		NQ	NQ
Best Estimate	NA		NQ	NQ

### Description and scale of key monetised costs by 'main affected groups'

Given the significant uncertainties (e.g. the number of Overseas Territories and Crown Dependencies that would choose to ratify the 2002 Protocol is uncertain) and the limitations of the available evidence, it has not been possible to monetise any of the costs that have been identified in this impact assessment.

### Other key non-monetised costs by 'main affected groups'

In the event that one or more Overseas Territories and Crown Dependencies ratify the 2002 Protocol, there would be a number of potential costs from applying the 2002 Protocol to additional voyages, such as the potential costs of taking out additional insurance coverage. As the EU Regulation already applies the key provisions of the 2002 Protocol to all international voyages undertaken by EU registered passenger ships, there are only limited circumstances when they could incur extra costs. However, this could potentially also result in additional costs for non-EU registered passenger ships that are owned by UK businesses.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	NA	NA	NA	NQ
High	NA		NA	NQ
Best Estimate	NA		NA	NQ

### Description and scale of key monetised benefits by 'main affected groups'

Given the significant uncertainties and the limitations of the available evidence (e.g. there is no available evidence on the costs associated with the risk that the certificates already issued to UK registered ships under the EU Regulation will not be accepted and recognised by other State parties under the 'Do Nothing' scenario), it has not been possible to monetise any of the benefits that have been identified in this impact assessment.

### Other key non-monetised benefits by 'main affected groups'

1.) UK ratification of the 2002 Protocol will remove any risk that the certificates already issued to UK registered ships under the EU Regulation will not be accepted and recognised by other State parties. 2.) In the event that one or more Overseas Territories and Crown Dependencies ratifies the 2002 Protocol, there would be a number of potential benefits from applying the 2002 Protocol to additional voyages, particularly for passengers on ships undertaking such voyages.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

Under the 'Do Nothing' scenario, there is a risk that the certificates already issued to UK registered ships under the EU Regulation will not be accepted and recognised by other State parties. This risk will be removed by Policy Option 1.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	N/A

## Evidence Base

The key provisions of the 2002 Protocol have already been given effect at EU level by Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents which entered into force across the EU on 31 December 2012. Regulation (EC) 392/2009 applies to international carriage (within the meaning of the Athens Convention) and to carriage by sea within a single EU Member State on board vessels of Class A and B (under Article 4 of Directive 98/18/EC) where:

- a) the ship is flying the flag of or is registered in an EU Member State;
- b) the contract of carriage has been made in an EU Member State; or
- c) the place of departure or destination, according to the contract of carriage, is in an EU Member State.

The UK has implemented the EU Regulation through 'The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012' (Statutory Instrument 2012/3152) which has also taken advantage of two derogations permitted in the EU Regulation, namely, the exclusion of Class A and B type vessels until 31 December 2016 and 31 December 2018 respectively (vessel classifications are determined by the sea area in which they normally operate). Passengers travelling on those international and domestic journeys to which the EU Regulation applies are therefore already benefitting from the higher levels of protection afforded by the 2002 Protocol, with passenger vessels having to demonstrate that they have the appropriate insurance in place to meet their liabilities. But this is not currently the case for those passenger vessels on international journeys to which the EU Regulation does not apply that are taking place exclusively outside of EU waters.

Through two Council Decisions (referred to earlier) all EU Member States are expected to ratify the 2002 Protocol as soon as possible. The Protocol itself will come into force internationally on 23 April 2014.

A six week consultation was launched on 16 August 2012 on the proposals for implementing the EU Regulation and the 2002 Protocol. Some 34 institutions and organisations were invited to comment. However, no additional evidence, or any other comments, on the analysis presented in the consultation-stage Impact Assessment for the 'The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012' (DfT00139) was forthcoming. Nonetheless, industry was generally supportive of the proposed approach to implementation.

Whilst this Impact Assessment draws heavily on the final-stage Impact Assessment for the 'The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012' (DfT00139)<sup>1</sup> which was published in the library of both Houses of Parliament on 19 December 2012, further requests for information or data have been extended to the maritime sector, primarily through the Chamber of Shipping and with the main maritime insurance providers, the International Group of Protection and Indemnity (IGP&I) Clubs.

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<sup>1</sup> [http://www.legislation.gov.uk/ukxi/2012/3152/pdfs/uksifia\\_20123152\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/3152/pdfs/uksifia_20123152_en.pdf)

**Title of proposal:** Consequential amendments to the Merchant Shipping Act 1995 to facilitate UK ratification of the 2002 Athens Protocol relating to the Carriage of Passengers and their Luggage by Sea

**Definitions:** In this impact assessment reference to-

- *The Athens Convention* means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- *The 2002 Protocol* means the Protocol of 2002 to the Athens Convention 1974;
- *The EU Regulation* means the EU Regulation No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents and which introduced the key provisions of the Protocol into EU law;
- *SDR* means a Special Drawing Right. A SDR is an international reserve asset created by the International Monetary Fund in 1969 to supplement its member countries' official reserves. As at 2 August 2013, 1 SDR was worth around £0.97 (\$1.5)<sup>2</sup>;
- The *carrier* means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier; and
- *UK Ratification* means adoption by the UK of the 2002 Athens Protocol at international level.

## **SECTION 1 – BACKGROUND**

### **1.1. The Athens Convention, 1974**

The UK is a State Party to the International Maritime Organisation (IMO) Athens Convention. The Athens Convention establishes a 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 carried by sea on any international carriage. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. However, unless the carrier acts with intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the carrier can limit its liability at 46,666 SDRs per passenger, per carriage. The Athens Convention was incorporated into UK law by Section 14 of and Schedule 3 to the Merchant Shipping Act 1979 and the Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980 made temporary provision for the Athens Convention to apply to certain contracts of international and domestic carriage pending its entry into force. The UK will denounce the 1974 Athens Convention at the same time as ratifying the 2002 Protocol.

### **1.2. The Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987**

The Athens Convention entered into force internationally on 30<sup>th</sup> April 1987. On the same day that the Athens Convention was given the full force of law in the UK, the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987<sup>3</sup> also took effect. This Order extended the requirements of the Athens Convention to the carriage of fare-paying passengers on domestic seagoing voyages within the UK, the Channel Islands and the Isle of Man where there is no intermediate port of call outside that area.

### **1.3. The Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998**

In addition, through the Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998<sup>4</sup>, the UK established an enhanced national liability limit of up to 300,000 SDRs 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) after the *Herald of Free Enterprise* disaster in 1987 from 46,666 to the equivalent of 100,000 SDRs.

### **1.4. The 2002 Protocol to the Athens Convention**

In 2002, the IMO adopted a Protocol amending the Athens Convention which, when in force, will:

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<sup>2</sup> [http://www.imf.org/external/np/fin/data/param\\_rms\\_mth.aspx](http://www.imf.org/external/np/fin/data/param_rms_mth.aspx)

<sup>3</sup> Statutory Instrument 1987 No. 670

<sup>4</sup> Statutory Instrument 1988 No. 2917

- Introduce higher liability limits on carriers (from 46,666s to 400,000s SDR per passenger per carriage);
- Require the carrier to provide evidence of insurance up to 250,000s SDR 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 (e.g. the Secretary of State for Transport);
- Introduce the right of direct action against the insurer up to 250,000s SDR; and
- Lengthen the time bar provisions i.e. the amount of time that is allowed to pass after an incident on an international passenger journey before any action for damages has to be brought before a court of law.

### **1.5. EU Regulation (EC) 392/2009 on the liability of carriers of passengers by sea**

This EU Regulation introduced the key provisions of the 2002 Protocol into EU law from 31 December 2012 (see Table 1 in Section 1.9). Regulation (EC) 392/2009 applies to international carriage (within the meaning of the Athens Convention) and to carriage by sea within a single EU Member State on board vessels of Class A and B (under Article 4 of Directive 98/18/EC)<sup>5</sup> where:

- a) the ship is flying the flag of or is registered in an EU Member State;
- b) the contract of carriage has been made in an EU Member State; or
- c) the place of departure or destination, according to the contract of carriage, is in an EU Member State.

### **1.6. Council Decisions 2012/22/EU and 2012/23/EU concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of, and as regards to, Articles 10 and 11 thereof**

These two Council Decisions confirm the competency of the EU in this area and acknowledges that the UK accedes to such competency only in this instance. Furthermore, under Article 4 of each Decision, there is an explicit requirement for Member States to ratify the 2002 Protocol.

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

These regulations facilitate the implementation of the EU Regulation which introduced the key provisions of the 2002 Protocol into EU law, and will enable the UK to meet its obligations under the 2002 Protocol without any further enforcement measures being required.

### **1.8 Revocation of domestic legislation**

Three pieces of secondary legislation associated with the Athens Convention have been identified as being redundant as part of the Red Tape Challenge process. These are:

- (a) Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980<sup>6</sup>;
- (b) Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1980<sup>7</sup>; and
- (c) Carriage of Passengers and their Luggage by Sea (Parties to Convention) Order 1987<sup>8</sup>

<sup>5</sup> Merchant Shipping Notice (MSN) 1747 - The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000, sets out the sea areas around the United Kingdom as is required by Article 4.2 of Council Directive 98/18/EC of 17 March 1998 on Safety Rules and Standards for Passenger Ships. These Regulations identify four domestic passenger ship classifications.

<sup>6</sup> Statutory Instrument 1980 No. 1092

<sup>7</sup> Statutory Instrument 1980 No. 1125

<sup>8</sup> Statutory Instrument 1987 No. 931

## 1.9. Summary of the key components of the Athens regime

**Table 1: Key components of the Athens regime on a per passenger basis**

	'74 Athens Convention	'87 Domestic Carriage Order	'98 United Kingdom Carriers Order	'02 Protocol to the Athens Convention	EU Regulation 392/2009
Limit of Liability – death and injury	46,666 SDRs	46,666 SDRs	300,000 SDRs	400,000 SDRs	400,000 SDRs
Limit of Liability – death and injury (war and terrorism)	As above	As above	As above	250,000 SDRs up to an overall limit of 340 million SDRs	250,000 SDRs up to an overall limit of 340 million SDRs
Limit of Liability – cabin luggage	833 SDRs	833 SDRs	833 SDRs	2,250 SDRs	2,250 SDRs
Limit of Liability – vehicles	3,333 SDRs	3,333 SDRs	3,333 SDRs	12,700 SDRs	12,700 SDRs
Limit of Liability – other luggage	1,200 SDRs	1,200 SDR	1,200 SDRs	3,375 SDRs	3,375 SDRs
Deductible – Vehicles	117 SDRs	117 SDRs	117 SDRs	330 SDRs	330 SDRs
Deductible – Luggage	13 SDRs	13 SDRs	13 SDRs	149 SDRs	149 SDRs
Basis of Liability	Fault	Fault	Fault	Strict	Strict
Compulsory insurance	No	No	No	Yes	Yes
State Certification	No	No	No	Yes	Yes
Right of direct action	No	No	No	Yes	Yes
Length of time bar	3 years	3 years	3 years	5 years	5 years
Scope	International	UK, Channel Islands and the Isle of Man	UK, Channel Islands and the Isle of Man	International	EU including domestic seagoing services
Advance Payments	No	No	No	No	Yes
Specific compensation for mobility equipment	No – luggage limits apply	No – luggage limits apply	No – luggage limits apply	No – luggage limits apply	Yes

## 1.10. The relationship between the Convention on Limitation of Liability for Maritime Claims (LLMC) and the Athens Convention

The UK is also a State Party to the International Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 as amended by the 1996 Protocol. The LLMC enables 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 of the shipowner is 175,000 SDRs multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate. This means that a shipowner will need to have in place insurance to meet his liabilities which will be based on the maximum number of passengers the vessel is certified to carry and which will provide the overall liability; nevertheless, a passenger may not be able to expect more than 175,000 SDRs in the event of an incident.

The LLMC, as amended by the 1996 Protocol forms part of UK law through section 185 of and Schedule 7 to the Merchant Shipping Act 1995 ("the Act"). The Act was amended to take account of the changes to the LLMC by the 1996 Protocol through the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998<sup>9</sup>. These changes became effective on 13 May 2004.

<sup>9</sup> SI 1998 No 1258

Article 19 of the Athens Convention, which forms part of UK law through section 183 of the Act, states that the Athens Convention “shall not modify the rights or duties of the carrier, the performing carrier and their servants or agents provided for in international conventions relating to the liability of owners of seagoing ships”.

To conclude, a shipowner would, under existing UK law, be entitled to invoke the global limitation in the LLMC in respect of a claim to which the Athens Convention applied and could limit its 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 SDRs multiplied by the number of passengers which the ship is authorised to carry according to the ship’s certificate. Under our preferred option (Option 1), the ability to invoke this global limitation will remain unchanged.

## **2. PROBLEM UNDER CONSIDERATION**

The key provisions of the 2002 Protocol, which modernises and significantly strengthens the international (worldwide) framework for providing compensation in the event of the death of or personal injury of a fare paying passenger carried at sea, have already been given effect at EU level. The UK now needs to ratify the 2002 Protocol itself, which is due to enter into force at international level on 23 April 2014. If the UK does not ratify the 2002 Protocol the effect may be that UK vessels engaged in non-EU international journeys, run a risk of not being able to present the appropriate certification (if requested to do so by a non-EU State that has ratified the Protocol) to demonstrate that they have the correct insurance in place, since they would be compelled to rely on any such certification issued in the context of the EU Regulation, rather than in compliance with the 2002 international Protocol. This could, in turn, lead to situations where UK vessels are detained in port until such time as they obtain the correct certification, even though they have in place the correct type of insurance cover to meet their obligations under the 2002 Protocol.

Furthermore, without full ratification by the UK, neither UK Overseas Territories nor Crown Dependencies (Jersey, Guernsey and Isle of Man) will be able to have the Protocol extended to them. This is because they are not recognised as independent states so they would not be able to enter into treaties on their own account. In the case of the maritime treaties these are made under the auspices of the International Maritime Organisation which is a UN organisation, and neither Overseas Territories nor Crown Dependencies are UN members.

There is a need to ensure that the framework for providing compensation in the event of the death or personal injury of a fare paying passenger continues to operate effectively, and that claims for compensation are met adequately and paid promptly. If the Overseas Territories and Crown Dependencies are not able to ratify the 2002 Protocol, the same level of protection would not necessarily be available to passengers on international (non-EU) journeys travelling on passenger ships registered in Overseas Territories and Crown Dependencies as for passengers travelling on passenger ships registered in the UK. For example, there would remain a risk that passenger ships registered in Overseas Territories and Crown Dependencies would not take out appropriate insurance coverage for risks relating to the death of or injury to passengers carried at sea, or the loss of or damage to luggage.

## **3. RATIONALE FOR INTERVENTION**

Through two Council Decisions (referred to earlier), all EU Member States are expected to ratify the 2002 Protocol as soon as possible.

In the absence of Government intervention, the UK will be unable to complete ratification of the 2002 Protocol and, therefore, will not be considered by the IMO to be a State Party to the 2002 Protocol when it enters into force internationally.

On the face of it, this will have little practical effect since the EU Regulation already applies the key provisions of the 2002 Protocol to EU flagged passenger vessels wherever they may be, and to other passenger vessels entering EU ports. Given that insurers will respect their own obligations in the event of an incident, wherever in the world it happens (unless they make specific provision with regard to certain territories or waters), then passengers should have recourse to a more effective and robustly compensatory regime under the EU Regulation than was hitherto possible.

However, without ratifying the 2002 Protocol, the UK will be unable to issue State Certificates to any vessel (including those registered in the UK) attesting that they have the appropriate level of insurance in place at international level under the terms of the 2002 Protocol, which, as noted above, could, in turn, lead to situations where UK vessels are detained in port until such time as they obtain the correct certification. It will also mean that the UK is unable to extend ratification of the 2002 Protocol to the Overseas Territories and Crown Dependencies even though they might wish it, meaning, as noted above, that the same level of protection would not necessarily be available to passengers on international (non-EU) journeys travelling on passenger ships registered in Overseas Territories and Crown Dependencies as for passengers travelling on passenger ships registered in the UK.

Separately, Government intervention is needed to remove some redundant Athens related legislation. This was announced as part of the outcome of the maritime theme Red Tape Challenge on 20 March 2013.

### **3.1. Description of the Regulation**

#### *3.1.1 For the Purposes of ratifying the 2002 Protocol*

Before the UK is able to ratify the 2002 Protocol, it will be necessary to amend Part I of Schedule 6 of the Merchant Shipping Act 1995 which consists of the original 1974 Athens Convention provisions (which are amended by the 2002 Protocol). Ratification will also require, at the same time, the UK to denounce the 1974 Convention in order to ensure legal certainty by being able to apply only one legal framework – that of the 2002 Protocol. These changes to Part I of Schedule 6 will take place in parallel to the Foreign and Commonwealth Office deposit the UK's instrument of ratification to the IMO Secretariat, thereby ensuring that the new provisions come seamlessly into force in UK law at the same time that the UK ratifies and denounces the original Convention.

At that point, should any of the Overseas Territories or Crown Dependencies subsequently wish it, extension of the 2002 Protocol can be achieved using the powers of section 315 of the Merchant Shipping Act 1995.

#### *3.1.2. Revocation of redundant legislation identified through the Government's Red Tape Challenge process*

These are:

- (a) Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980<sup>10</sup>;
- (b) Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1980<sup>11</sup>;
- (c) Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1987<sup>12</sup>

#### *3.1.3. Administration of the requirement to carry compulsory insurance*

The 2002 Protocol states that a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship by the appropriate authority of a State Party. The MCA currently issues certificates which demonstrate the equivalent levels of cover are in place under the provisions of the EU Regulation. It is, however, worth noting that once the UK has ratified the 2002 Protocol, no further certificates will need to be obtained by the shipowner, since it is only the nature of the certificate itself that is changing, so that it is compliant with both the EU Regulation and the 2002 Protocol. Any certificate issued under the EU rules (regardless of the flag of the vessel) would, therefore, be automatically applicable and be compliant with the 2002 Protocol once the UK has ratified. Therefore, there will not be any need for UK shipowners to obtain any additional certificates as a result of UK ratification of the 2002 Protocol.

Shipowners will need to ensure that their certificates are available for examination at all times by the relevant Port State Officers (meaning that there is no change to the current requirements under the EU Regulation for non-EU flagged vessels that call at UK ports). Failure to provide the relevant

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<sup>10</sup> Statutory Instrument 1980 No. 1092

<sup>11</sup> Statutory Instrument 1980 No. 1125

<sup>12</sup> Statutory Instrument 1987 No. 931



documentation would mean that the ship is liable to be detained and a shipowner would be deemed to have committed an offence if they were unable to provide evidence of the correct insurance being maintained.

In the UK, the role of the appropriate authority is undertaken by the Maritime and Coastguard Agency, who already issues certificates to UK registered ships and may also issue certificates to non-UK registered ships for the purposes of the EU Regulation. Additionally, once the UK has ratified the Protocol, the MCA may also receive – and process – requests from non-EU vessels seeking MCA certification to demonstrate that they have the appropriate insurance in place at international level under the terms of the 2002 Protocol, since a shipowner may apply for certification from any State Party.

### 3.1.5. Penalties and offences

The need to have compulsory insurance for the liability of carriers of passengers by sea in the event of accidents is a key element of the 2002 Protocol. Whilst this requirement needs to be backed up by robust and effective provisions in national legislation that incentivise compliance, the Protocol leaves the compliance regime to be developed to the individual Member State.

The UK enforcement measures introduced into domestic law for the purposes of implementing the EU Regulation will also meet the UK's obligations under the 2002 Protocol. Therefore, no new penalties or offences are necessary for the purposes of ratification.

## 4. BACKGROUND DATA

### 4.1. Incidents involving passenger ships – a global perspective

Thankfully, catastrophic incidents involving passenger ships – such as the recent sinking of the Costa Concordia off the coast of Italy - are rare. Whilst Table 2 is not definitive, it does give a perspective on the most significant incidents involving passenger ships which have occurred globally since 1983.

**Table 2: Significant incidents involving passenger ships at sea**

Year	Location	Name of ship & flag State	Death toll
2012	Italy	Costa Concordia (Italy)	32
2011	Tanzania	Spice Islander I (Tanzania)	187
2008	The Philippines	MV Princess of Stars (Philippines)	832
2006	Red Sea	MS al-Salam Boccaccio 98 (Egypt)	1,018
2005	United States	Ethan Allen (US)	20
2002	The Gambia	MV Joola (Senegal)	1,863
2003	Chandpur, Bangladesh	MV Nazreen 1 (Bangladesh)	528
2000	Sulawesi, Indonesia	Cahava Bahari (Indonesia)	550
2000	Greece	MS Express Samina (Greece)	81
1999	Norway	MS Sleipner (Norway)	16
1996	Lake Victoria, Tanzania	MV Bukoba (Tanzania)	894
1994	Baltic Sea	MS Estonia (Estonia)	852
1993	Baltic Sea	MS Jan Heweliusz (Poland)	54
1991	Italy	Moby Prince (Italy)	140
1990	Skagerrak	Scandinavian Star (Bahamas)	158
1989	Danube, Romania	Mogosoia (Romania)	161
1987	English Channel	Herald of Free Enterprise (UK)	193
1987	The Philippines	MV Doña Paz (Philippines)	4,375
1986	Meghna River, Bangladesh	Shamia (Bangladesh)	600
1986	Dhaleswar River, Bangladesh	Atlas Star (Bangladesh)	500
1986	Black Sea	Admiral Nakhimov (Russia)	423
1983	Volga, Russia	Alexander Suvorov (Russia)	177

*Source: DfT research undertaken for the Impact Assessment for the 'The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012' (DfT00139)*

## 4.2. The marine insurance sector – from an Athens perspective

Insurance costs vary significantly from one ship to another. Shipowner's insurance requirements cover a plethora of risks and liabilities, including Hull & Machinery (H&M), cargo, and Protection & Indemnity (P&I).

P&I insurance is a form of marine insurance provided by a P&I Club. A P&I club is a mutual (i.e. co-operative) insurance association that provides cover for its members, who will typically be ship-owners, ship-operators or charterers. Unlike a marine insurance company, which is answerable to its shareholders, a P&I club is the servant only of its members. P&I insurance tends to cover a range of less certain and quantifiable risks, and include most third party liabilities. In the passenger sector, third party liabilities tend to include liabilities with regard to passengers, luggage and vehicles.

The International Group of Protection & Indemnity Clubs (IGP&I Clubs) includes 13 clubs. Five of these clubs are based in the UK. *The world merchant fleet in 2011, Statistics from Equasis*<sup>13</sup> indicates that for vessels over 500GT contained in the Equasis database, for which data has been supplied, the IGP&I Clubs provide P&I insurance to approximately 45% of the passenger ships and approximately 84% of these ships by tonnage.

### 4.2.1 Non-war/non-terrorism insurance cover

The IGP&I Clubs provide insurance cover for third party liabilities for shipowners through a claim sharing agreement between themselves ("the Pooling Agreement"). The claim sharing agreement provides for different layers of insurance cover, along the following general lines:

- the first \$9 million of any claim is borne by the individual club whose shipowner has incurred the claim;
- the excess of any claim above \$9 million up to \$30 million is shared by the Clubs under the Pooling Agreement; and
- the excess of any claim above \$30 million up to \$2 billion is covered by reinsurance obtained collectively by the Clubs with commercial insurers (such as Lloyd's).

Further detailed information of the IGP&I Club insurance structure can be found at:

<http://www.igpandi.org/downloadables/2013%20-%20Reinsurance%20Diagram.pdf>

Shipowners that have not entered their ship into an IGP&I Club tend to take out conventional premium-based marine insurance. These insurers are profit-making firms where the level of liability cover required will correlate closely with premiums charged. Generally it is the operators of small passenger ships that seek premium-based marine insurance because they have less desire to 'pool' their relatively small risks with operators of larger ships. Premium based insurers tend to charge a one-off amount thereby giving shipowners certainty with respect to annual insurance costs.

Ships carrying 12 passengers or less are not required to maintain compulsory insurance under the 2002 Protocol for non war/terrorism risks.

### 4.2.2 War/terrorism cover

Whilst there is no exclusion from liability under the Athens Convention where damage occurs as a result of an act of war/terrorism, there is a need under the 2002 Protocol to provide cover for war/terrorism incidents separately from non-war/terrorism incidents (e.g. a collision).

After the 2002 Protocol was negotiated, the IGP&I Clubs indicated that they were not willing, for reasons of mutuality, to provide the liability cover required under the 2002 Protocol to shipowners for war/terrorism risks. At its meeting in October 2006, the Legal Committee of the IMO accepted a solution that requires carriers to be liable for terrorism related incidents to a limit of 250,000 SDR per passenger, subject to an overall limit of 340 million SDR (see Table 1 in Section 1.9).

The industry have advised that at present a shipowner might purchase primary war risk insurance cover (Hull War Risks and P&I War Risks) from the commercial insurance market. This is likely to be supplemented by an additional amount of cover (\$500 million) purchased by the IGP&I Clubs. This cover is not however sufficient because it is not available in accordance with the provisions of the 2002 Protocol. All carriers will therefore need to have additional war/terrorism cover.

<sup>13</sup> <http://emsa.europa.eu/implementation-tasks/equasis-a-statistics/download/1933/472/23.html>

Insurance certificates covering this risk are already issued by those insurers prepared to cover the insurance liabilities associated with this risk, the most prominent being Marsh Ltd. These insurance brokers, based in London, have confirmed to the IMO that it will provide the necessary insurance and already does so under the requirements of the EU Regulation.

Marsh Ltd have indicated that in order to be able to provide the necessary war/terrorism cover as required by the 2002 Protocol, a shipowner must have primary war risk insurance i.e. Hull War Risk cover, in place and have access to a second layer of P&I War Risk such as that purchased by the IGP&I Clubs. If a shipowner does not have access to this second layer, then the shipowner is likely to be charged a higher premium for war/terrorism cover required by the 2002 Protocol.

Ships carrying 12 passengers or less are not required to maintain compulsory insurance under the 2002 Protocol for war/terrorism risks.

### 4.3. The Cost of Past incidents

The information in this section is based on the final-stage Impact Assessment for the 'The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012' (DfT00139) and has not been updated subsequently.

There have been very few major incidents in recent history involving passenger ships. However, as demonstrated by the recent sinking of the Costa Concordia off the coast of Italy, such incidents do still occur, and when they do they can be very costly (in the case of the Costa Concordia, the full costs are expected to be in excess of \$750 million). The only major incident that has occurred that we are able to analyse from a cost perspective is the **Estonia** incident. When the ferry *Estonia* sank in 1994, 852 persons lost their lives. The insurance provider in this instance was the Skuld P&I Club. The total cost of the claim was US\$ 85 million according to the IGP&I Clubs. It should be noted that whilst most of the compensation would have been the settlement of passenger claims, the total cost of the claim also includes crew claims and costs, which would have been covered by their employment contracts and not covered by the Athens Convention.

Table 3 shows the breakdown of claims that have been paid by the IGP&I Clubs between the period 20<sup>th</sup> February 2004 and 20<sup>th</sup> February 2010. The IGP&I Clubs have advised that the majority of claims in Table 3 would have been settled out of court because of negligence on the part of the shipowner and it is unlikely that such claims would have been subject to the limits of liability of the Athens Convention or other international instruments because of the shipowner's willingness to settle claims for death and personal injury in full.

**Table 3 (Passenger claims paid by IGP&I Clubs: 2004 to 2010)**

<b>Personal Injury/Death – Non Crew (Claims above US\$500, 000 from 20 Feb 2004 to 20 Feb 2010)</b>				
Total number of incidents where claims incurred were: US\$500, 000 – US\$999,999	Total number of incidents where claims incurred were: US\$1million – US\$4, 999, 999	Total number of incidents where claims incurred were: > US\$5 million:	Total involving all vessels irrespective of flag:	Total involving UK flagged vessels:
39	28	4	71	5

*Note: This data may contain a small number of claims paid to stevedores and/or the family of crew members. The data does not contain any information involving claims involving the US litigation system.*

This data does not however provide any information on the number of claimants in relation to each incident. This is important because it is not possible to ascertain the amount claimed per passenger, which is the basis on which the maximum level of liability under the Athens Convention and the 2002 Protocol is calculated.

Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the average claim per passenger in these 71 incidents, and the extent that these claims were subject to the existing liability limits contained in the Athens Convention and other existing legislation; and were asked, for claims that were not subject to liability limits, how many individual claims over 400,000 SDR were paid. No such additional data was provided.

## 5. POLICY OBJECTIVES

The first policy objective is for the UK to ratify the 2002 Protocol. This will not only ensure that UK-flagged passenger vessels can be issued with the correct international certification, but it will also enable the 2002 Protocol to be extended to the Overseas Territories and Crown Dependencies should they so wish – which, if they chose to do so, would enhance the protection that is available to passengers travelling on board vessels which are flagged to the Overseas Territories and Crown Dependencies when travelling on international (non-EU) journeys.

The second policy objective is to respect a Red Tape Challenge commitment by revoking some redundant legislation.

## 6. OPTIONS

This impact assessment considers the additional costs and benefits of the policy option that is discussed below. The 2002 Protocol will come into force internationally on 23 April 2014. Before the UK can successfully ratify the 2002 Protocol, it needs to incorporate the text of the Convention as modified by the 2002 Protocol into UK law. However, it should be noted that the vast majority of the requirements of the 2002 Protocol (excluding the Articles on competent jurisdiction for claims, the recognition and enforcement of judgements, and future revision and amendments) already apply in the UK due to the EU Regulation (which introduces the 2002 Protocol into EU law) already having entered into force on 31 December 2012. For example, under the requirements of the EU Regulation, shipowners operating from the UK will already be required to have the relevant insurance cover in place, so ratification (which extends the scope to international non-EU journeys) will not attract any additional costs for premiums for such shipowners.

### 6.1. 'Do Nothing' scenario

The 'Do Nothing' scenario represents what would happen if the Government does not take any action, and would mean not providing the mechanism by which the UK can ratify the 2002 Protocol. This will result in no change to the current practice whereby the UK has to rely on the provisions of the 2002 Protocol established through the application of the EU Regulation. This may have little practical effect, since the EU Regulation already applies the key provisions of the 2002 Protocol to EU flagged passenger vessels wherever they may be and to other passenger vessels entering EU ports. However, it would mean that the UK is unable to issue State Certificates to vessels (including UK ones) attesting that they have the appropriate level of insurance in place at international level under the terms of the 2002 Protocol. It will also mean that the UK is unable to extend ratification of the 2002 Protocol to the Overseas Territories and Crown Dependencies even though they might wish it and could lead to the situations previously described.

At the same time, whilst not revoking the redundant Athens related legislation would have no material effect, it could have reputational consequences for the Government's Red Tape Challenge programme.

For these reasons, doing *nothing* is not considered to be an appropriate course of action.

If the UK is unable to issue State Certificates, this could create difficulties for UK-flagged vessels on international (non-EU) journeys because they would have to go to another State that was a contracting party to the 2002 Protocol to obtain a State Certificate attesting that the necessary insurance was in place, or run a risk of not being able to present the appropriate certification (if requested to do so by a non-EU State that has ratified the Protocol) to demonstrate that they have the correct insurance in place, which could lead to situations where UK vessels are detained in port until such time as they obtain the correct certification

In the UK, the cost for such certificates charged by the MCA is £31 based on HMT cost-recovery principles; although the cost for certificates from elsewhere may be significantly higher and there are the possible additional costs that a ship operator may incur due to detention and delays. However, it is not possible to quantify these costs since there is no indication yet which other States will ratify or not, nor what the cost of their own certificates may be; or how any delays or detentions may be translated into a cost.

It could also lead to unnecessary confusion to shipowners who may already have a certificate issued under the aegis of the EU Regulation but find that it is not recognised in another non-EU State. In the event that the Overseas Territories and Crown Dependencies do not ratify the 2002 Protocol, these

issues could also create problems for passenger vessels operating out of Crown Dependencies or Overseas Territories which may enter a non-EU port where the State has ratified and where certificates are required.

## **6.2. Option 1: Introduce amending and enabling legislation to implement the 2002 Protocol in the UK and revoke redundant legislation**

The UK is obliged (as a result of two EU Decisions referred to previously) to ratify the 2002 Protocol, which amends the original Athens Convention (1974). This will need to be done three months prior to the 2002 Protocol entering into force at international level on 23 April 2014. In order to give full effect to the 2002 Protocol, it will be necessary to incorporate into UK law the text of the Athens Convention as amended by the 2002 Protocol. This can be achieved by amending Part I of Schedule 6 of the Merchant Shipping Act 1995.

The EU Regulation already applies the key provisions of the 2002 Protocol to EU flagged passenger vessels and other passenger vessels entering EU ports, and the enforcement measures introduced into UK law for these purposes already meet the UK's obligations under the 2002 Protocol. So shipowners of UK / EU-flagged vessels are already having to comply with the requirements of the 2002 Protocol in relation to journeys covered by the EU Regulation.

However, by making these legislative changes, it will also enable the Overseas Territories and the Crown Dependencies to have the 2002 Protocol extended to them, should they so wish it. The potential impacts of this are discussed in Section 7 below.

There are two ways in which the 2002 Protocol can become part of the law of an Overseas Territory or Crown Dependency once the UK has ratified the Protocol on their behalf. First, an Overseas Territory or British Island can adopt the provisions of the 2002 Protocol at local level through their own domestic legislation so that no further UK legislation is required. Alternatively, they can ask the UK to do this on their behalf by means of an Order in Council, at which point, any possible impacts on UK businesses could be considered in more detail.

Below is a list of Overseas Territories and Crown Dependencies with the numbers of registered passenger vessels (not including domestic ferries) that may be caught by the 2002 Protocol if they chose to have it extended to them. The list is based on the registration statistics provided by the Registrars of the Overseas Territories and Crown Dependencies for the purposes of the Red Ensign Group Conference that took place in May 2013. Although there is no firm evidence on this issue, the MCA understands that those passenger vessels registered in Bermuda, Cayman Islands, Isle of Man and Guernsey are most likely to operate within EU waters – and as such are likely to be caught already by the EU Regulation; in terms of international trading passenger ships, there are small passenger ferries registered in the British Virgin Islands which trade to the US Virgin Islands, and also some small passenger ferries registered in Anguilla trading to St Marteen; otherwise most will normally operate on domestic routes.

### British Islands (Crown Dependencies)

Guernsey	9 commercial vessels
Jersey	41 motor and sail
Isle of Man	1 High speed cargo passenger craft

### Overseas Territories

Gibraltar	0
St Helena	0
Anguilla	0
Bermuda	28 passenger vessels
British Virgin Islands	23 passenger vessels
Cayman Islands	1 passenger vessel
Falkland Islands	1 passenger/cargo vessel

Montserrat	0
South Georgia and Sandwich Islands	0
Pitcairn	0
Turks and Caicos	17 commercial vessels (Part I)

DfT analysis of IHS Global data indicates that there were 57 passenger ships<sup>14</sup> of 100 gross tons and over registered in the Crown Dependencies and Overseas Territories at 31 December 2011, including 12 UK owned (or directly owned) ships<sup>15</sup>, 3 ships with UK beneficial ownership<sup>16</sup> and 12 UK managed ships<sup>17</sup> (note – these categories are not mutually exclusive).<sup>18</sup>

Option 1 also includes the revocation of three existing pieces of domestic legislation related to the Athens Convention which have been identified, through the Government's Red Tape Challenge process, as being redundant. These regulations are:

- (a) Carriage of Passengers and their Luggage by Sea (Interim Provisions) Order 1980<sup>19</sup>. This is an enabling power and only applies to contracts for domestic carriage made before 30<sup>th</sup> April 1987 so no longer has any practical effect;
- (b) Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1980<sup>20</sup>. This is another enabling power and relates to the Order in (a) above. It requires a carrier, in relation to any contract of carriage to which the above Order applies, to give passengers notice of specified provisions of the Athens Convention;
- (c) Carriage of Passengers and their Luggage by Sea (Interim Provisions) (Notice) Order 1987<sup>21</sup>. This is another enabling power, and provides a list of new parties to the Convention which is wholly out of date. There is no longer any need for new parties to be specified in this way given that all this information is now available electronically.

## SECTION 7 - COSTS AND BENEFITS OF OPTION 1

Due to the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided in this impact assessment.

### Scope of the impact assessment

This impact assessment considers the additional costs and benefits that would arise as a result of the only policy option being considered (Policy Option 1), compared to those that would arise under the 'Do Nothing' scenario.

Under the 'Do Nothing' scenario, the EU Regulation (which applies the key provisions of the 2002 Protocol into EU law) would still be in force and directly applicable in the UK. Therefore, businesses would still have a legal duty to comply with those requirements of the EU Regulation that are applicable to them. Consequently, for the purposes of this impact assessment, the costs and benefits associated with the application of the 2002 Protocol to voyages to which the EU Regulation is directly applicable are not counted as costs and benefits of the new legislation that would be introduced in the UK under these policy options.

<sup>14</sup> For the purposes of this analysis, Passenger Ships comprise Cruise, Passenger, General cargo-passenger and Ro-Ro passenger ships.

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9857/file0202.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9857/file0202.xls)

<sup>16</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9868/file0601.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9868/file0601.xls)

<sup>17</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9869/file0701.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9869/file0701.xls)

<sup>18</sup> The definitions of these terms (e.g. UK managed ships) can be found in <http://assets.dft.gov.uk/statistics/series/shipping-fleet/shipping-fleet-tech-note.pdf>.

<sup>19</sup> Statutory Instrument 1980 No. 1092

<sup>20</sup> Statutory Instrument 1980 No. 1125

<sup>21</sup> Statutory Instrument 1987 No. 931

On this basis, the additional costs and benefits of Policy Option 1 to the UK that have been identified in this impact assessment are as follows:

- the costs and benefits to the UK if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol (see Section 7.1 and 7.2) ; and
- the benefits to the UK associated with the UK being able to issue State Certificates to vessels attesting that they have the appropriate level of insurance in place at international level under the terms of the 2002 Protocol (see Section 7.3).

The focus of an impact assessment is on the impacts of the policy option being considered which fall upon the UK, including the impacts on the public sector in the UK, UK businesses, the third sector in the UK and impacts on UK consumers. It should be noted that some non-UK flagged passenger vessels could be UK owned. The implication of this is that the impacts on non-UK flagged passenger vessels that have been identified in this impact assessment may fall on both UK and non-UK businesses.

### **7.1. Costs if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol**

Under the 'Do Nothing' scenario, the EU Regulation applies the key provisions of the 2002 Protocol to international carriage (within the meaning of the Athens Convention) and to carriage by sea within a single EU Member State on board vessels of Class A and B (under Article 4 of Directive 98/18/EC) where:

- a) the ship is flying the flag of or is registered in an EU Member State;
- b) the contract of carriage has been made in an EU Member State; or
- c) the place of departure or destination, according to the contract of carriage, is in an EU Member State.

However, it should be noted that the EU Regulation does not apply the key provisions of the 2002 Protocol to voyages between the UK mainland and the Crown Dependencies as these are neither domestic nor international in nature and are therefore out of scope of the EU Regulation.

Furthermore, it should be noted that the extent that the 2002 Protocol will be applied to other voyages under the 'Do Nothing' scenario will depend on which other countries ratify the 2002 Protocol.

There is uncertainty over which Crown Dependencies and Overseas Territories would ratify the 2002 Protocol under Policy Option 1.

However, if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol under Policy Option 1, shipowners could experience additional costs when operating ships on any voyages to which the 2002 Protocol would be additionally applied under Policy Option 1 compared to the 'Do Nothing' scenario. In particular, it has been identified that these costs could potentially arise in relation to the following voyages:

- Voyages undertaken by passenger ships registered in the Overseas Territories or Crown Dependencies between:
  - a) the Overseas Territories and Crown Dependencies that have ratified the 2002 Protocol and other countries that have not;
  - b) two countries that have not ratified the 2002 Protocol;
  - c) the Crown Dependencies that have ratified the 2002 Protocol and the UK mainland; and
  - d) two ports within the same Overseas Territory or Crown Dependency that has ratified the 2002 Protocol and extended it to include domestic journeys.
- Voyages undertaken by other passenger ships registered in countries that have not ratified the 2002 Protocol to or from ports in the Overseas Territories and Crown Dependencies that have (except where the EU Regulation or the 2002 Protocol already applies).

Table 4 summarises the potential additional costs to shipowners undertaking these voyages if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol under Policy Option 1, which may include UK businesses. For example, UK businesses may own or operate passenger ships registered in the Overseas Territories or Crown Dependencies.

With regards to the potential impacts of Policy Option 1 on UK registered ships, the only scenarios that it has been identified where additional costs could potentially arise for UK registered ships under Policy Option 1 are where the Overseas Territories and Crown Dependencies have ratified the 2002 Protocol

and applied it to domestic voyages, which could include voyages between the Crown Dependencies that have ratified the 2002 Protocol and the UK mainland.

Any costs to shipowners may be passed on to passengers, which may include UK passengers.

**Table 4: Potential additional costs to shipowners if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol**

Provision / Aspect		Cost
<u>Insurance Costs</u>		
Strict Liability		Potential increase in cost of insurance premiums/contributions directly attributable to the change from fault based to strict liability.
Compulsory Insurance	Non-war cover	Potential cost of insurance premiums/contributions to meet the requirement to have compulsory non-war cover.
	War/terrorism cover	Potential cost of insurance premiums/contributions specifically to cover liabilities under conditions of war/terrorism.
Limits of Liability	Death and Personal Injury	Potential increase in cost of insurance premiums/contributions directly attributable to increases in liability limits.
	Loss of or damage to luggage and vehicles	Potential increase in cost of insurance premiums/contributions directly attributable to increases in liability limits.
<u>Other Costs</u>		
Changes to Time Bar provisions		Potential increase in the number of claims due to increases in the time allowed to lodge them.
Familiarisation		Cost of familiarisation with the new requirements.
Administrative costs		Administrative costs due to additional requirements.

#### *Factors that determine the cost of insurance*

The maritime insurance industry has advised that the cost of insurance is determined by a wide range of factors, including the size and type of vessel, number of passengers carried, flag State and whether it is a State Party to the Convention on Limitation of Liability for Maritime Claims (LLMC), Port State Control risk categorisation, historical claims record, recent significant events on a global scale and market capacity. Any one of these aspects could influence the cost of insurance faced by shipowners, although the historical claims record of an operator is likely to have the most significant impact on the cost of insurance.

The insurance industry has also advised that there are also a number of external factors. For example, the IGP&I Clubs buy their reinsurance from the Lloyd's and corporate markets (UK and overseas) as a package covering the full spectrum of risks covered. Reinsurance availability and cost will be driven by many factors including non-marine events, such as hurricanes and the global economy in general. Market capacity is a crucial factor in determining underwriter's attitude both to writing and pricing risk. They also closely monitor convention and legislation changes which could impact on actual or potential exposure and reflect this in their pricing.

Consultations with industry indicate that premium-based insurance may be more sensitive to the changes required by the 2002 Protocol, meaning that the cost of premium-based insurance could increase more than insurance provided by a P&I Club. This may be because the existing level of cover available for passenger ships entered with the P&I Clubs (US\$ 2 billion per ship) should still be sufficient to cover the increased liability in the majority of situations. However, those ships insured by other institutions would have to insure against greater limits of liability overall. It is possible therefore that this would have an impact on insurance premiums charged.

#### *7.1.1.1. Strict Liability*

Under the 2002 Protocol, the basis of liability is determined by the cause of the damage. Carriers are strictly liable (i.e. the carrier is liable without the need to prove fault or neglect) for shipping incidents such as shipwreck, capsizing, fire, explosion or defect in the ship. For non-shipping incidents (e.g. hotel-type incidents such as tripping on a carpet), the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect, in respect of non-shipping incidents, would still lie with the claimant as it does under current domestic legislation.



### 7.1.1.2. Compulsory insurance

#### *Non-war insurance cover*

Shipowners may insure against traditional third-party liabilities established by the 2002 Protocol by entering their ship with a P&I Club or by purchasing premium-based insurance. The impacts of the changes resulting from the 2002 Protocol on individual shipowners would vary depending upon how shipowners currently insure their vessels.

Nevertheless, all UK passenger vessels on a seagoing voyage covered by the EU Regulation (except those carrying 12 passengers or less) are required under the EU Regulation to maintain insurance cover to meet the increased liability under the 2002 Protocol up to 250,000 SDR per passenger per carriage. As an indicative example, the owner of a ship which is certified to carry 1,000 passengers would be required under the 2002 Protocol to maintain compulsory insurance with direct action against the insurer to provide anticipatory guarantees<sup>22</sup> for approximately £243 million<sup>23</sup>.

There is uncertainty over which Crown Dependencies and Overseas Territories would ratify the 2002 Protocol under Policy Option 1. Furthermore, industry has been unable to provide any data on how many foreign flagged passenger vessels are UK owned and operate to, from or between the Overseas Territories and Crown Dependencies. Neither has it been possible to identify how many of these shipowners already have effective insurance covering traditional 3<sup>rd</sup> party risks. Where they do hold insurance, it is assumed that the additional cost to these shipowners of obtaining compulsory “non-war” insurance is likely to be insignificant because the existing level of the cover provided by the IGP&I Clubs should, in the majority of circumstances, be sufficient to cover the enhanced limits of liability established by the 2002 Protocol. But for any shipowner that had previously chosen not to take out insurance, the costs would be greater. However, due to the limitations of the available evidence base (e.g. no evidence on the number of such shipowners is currently available), it has not been possible to monetise these costs in this impact assessment.

Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including whether current levels of cover are sufficient to meet the requirements of the 2002 Protocol with respect to non-war insurance. No further evidence or information was made available.

#### *War/terrorism insurance cover*

Under the 2002 Protocol carriers are to be liable for terrorism related incidents to a limit of 250,000 SDR per passenger, subject to an overall limit of 340 million SDR.

Marsh Limited, a large insurance broker based in London has devised an insurance product specifically for this purpose. It is not clear how many other insurers will offer similar products in the future, although a number have emerged since the UK implemented the EU Regulation. Marsh Limited have indicated potential costs for war/terrorism cover up to the limits of liability stated in the 2002 Protocol in the order of US\$0.03 per passenger per carriage for international voyages (at 2012 prices). Marsh Limited has indicated that the price of insurance for vessels on domestic voyages is likely to be less because it is assumed that the risk to vessels on international voyages is higher.

However, although invited to do so, industry has been unable to provide any deeper or wider data on how many non-UK flagged passenger vessels are UK owned and operate on the additional voyages to which the 2002 Protocol could be applied under Policy Option 1, or provide data on the number of passenger carried on these vessels. Furthermore, there is uncertainty over which Crown Dependencies and Overseas Territories would ratify the 2002 Protocol under Policy Option 1. So it has not been possible to estimate the order of magnitude of the potential costs of Option 1.

To illustrate the potential costs that could arise, DfT Sea Passenger Statistics<sup>24</sup> indicate that approximately 873 thousand passengers travelled between Great Britain and the Crown Dependencies in 2012. If all of the Crown Dependencies ratified the 2002 Protocol and applied it to these voyages, the estimate provided by Marsh Limited on the cost of war/terrorism cover

<sup>22</sup> Anticipatory guarantees simply guarantee that a payment will be made in the event of an incident.

<sup>23</sup> 250 million SDRs assuming an exchange rate of £0.97 per SDR.

<sup>24</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/88208/sea-pass-2012-tables.ZIP](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/88208/sea-pass-2012-tables.ZIP)

per passenger per carriage indicates that the total cost would be of the order of £20,000 per year<sup>25</sup>.

### *Administrative costs associated with making claims to insurance companies*

Should any additional claims be made to insurance companies, it is likely that there would be some new administrative costs for shipowners. However, no evidence is currently available on the scale of these potential costs, so it has not been possible to assess these potential costs in this impact assessment.

Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, but no further information was provided.

#### *7.1.1.3. Limits of Liability*

##### *7.1.1.3.1. Death and personal injury*

Currently, a shipowner's limit of liability is prescribed as 46,666 SDR per passenger per carriage, for those carriers, whose principle place of business, for example, is in an Overseas Territory to which the Athens Convention applies. Under Option 1, the limits of liability for death and personal injury would be increased from 46,666 to 400,000 SDR per passenger per carriage.

Indications from consultations with the insurance industry suggest that limits of liability are not a key determinant of the cost of insurance charged to shipowners. However, it may be the case that a major accident might affect future insurance costs more than they would have been affected if the limits of liability remained at current levels. Due to the lack of available evidence to specifically attribute increases in insurance costs to increases in the limits of liability for death and personal injury, it has not been possible to monetise the potential additional costs of this aspect of Option 1. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, but no information was provided.

##### *7.1.1.3.2. Loss of or damage to luggage and vehicles*

Currently, the same carrier's limit of liability with respect to loss or damage to luggage is established at 833 SDR under the Athens Convention. Under the 2002 Protocol, this limit of liability increases to 2,250 SDR (a 270% increase).

For vehicles, other than those carried under a charter party, bill of lading of other contract primarily concerned with the carriage of goods and luggage carried by them, the limits of liability increase from 3,333 SDR under the Athens Convention to 12,700 SDR per vehicle under the 2002 Protocol (a 381% increase).

For luggage other than that covered specifically as luggage or carried in a vehicle (i.e. hand luggage), the limit increases from 1,200 SDR under the Athens Convention to 3,375 SDR per passenger under the 2002 Protocol (a 281% increase).

Deductibles established under the Athens Convention, set at 13 SDR for luggage and 117 SDR for vehicles, rise to 149 SDR and 330 SDR respectively under the 2002 Protocol.

A shipowner's maximum limit of liability for claims relating to loss of or damage to luggage in respect of a ship carrying 1,000 passengers and 200 vehicles would be approximately £8 million<sup>26</sup>.

Although insurance providers, the shipping industry and other stakeholders were invited to provide additional evidence or data, there is no evidence available on the potential increase in insurance costs that shipowners would face specifically due to the increases in liability for loss or damage to luggage and vehicles as a result of ratifying the 2002 Protocol. Therefore, it has not been possible to monetise this aspect of the potential costs of Option 1.

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<sup>25</sup> This estimate has been rounded up to the nearest £10,000. Exchange rate data from the Bank of England (<http://www.bankofengland.co.uk/boeapps/iadb/index.asp?first=yes&SectionRequired=I&HideNums=-1&ExtraInfo=true&Travel=NIxIRx>) was used to convert the estimate provided by Marsh Limited from US Dollar to £ Sterling.

<sup>26</sup>  $\text{SDR} \times 0.97 = \text{GBP} [(((2250 + 3375) \times 0.97) \times 1000) + ((12700 \times 0.97) \times 200)] = \text{£}7.92 \text{ million}$

#### *7.1.1.5.2. Changes to Time Bar provisions*

The proposed changes to the time bar provisions effectively increase the amount of time that can elapse before a claim against a particular incident can no longer be lodged. It is possible that this could result in an increase in the number of claims lodged. This could potentially increase costs for carriers and insurance providers. However, it is not known to what extent the number of claims would increase as a result of this provision. In particular, there is no evidence currently available on the average length of time that elapses between incidents occurring and claims being submitted. Therefore, it has not been possible to monetise these potential costs in this impact assessment. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.1.1.5.3. Familiarisation*

Carriers may incur costs familiarising themselves with the requirements under the policy option. However, it is assumed that it is likely that there would not be significant additional costs associated with familiarisation because the Athens Convention has been in effect for most of the Overseas Territories and Crown Dependencies since 1987. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.1.1.5.4. Costs to shipowners of applying for State Certificates*

The 2002 Protocol states that a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that certain requirements have been complied with. With respect to a ship registered in a State Party, such a certificate shall be issued or certified by the appropriate authority of the State of the ship's registry. With respect to a ship not registered in a State Party, it may be issued or certified by the appropriate authority of any State Party.

UK domestic legislation for the purposes of implementing the EU Regulation already designates the Secretary of State (acting through the MCA) as the appropriate authority in the UK for the purposes of issuing a certificate.

This UK implementing legislation also indicates that more than one insurance certificate is likely to be required for each ship, one for war/terrorism risks and the other for non-war risks. The MCA will issue a single certificate which would confirm that the required insurance is in place. The cost of issuing a State certificate under the Athens regime is £31, which would be charged to industry on a full cost-recovery basis. Therefore, MCA would recover any costs of issuing additional certificates under Policy Option 1 from business.

The potential costs for UK businesses would depend on the number of foreign flagged passenger vessels that are UK owned which are required to obtain a certificate under Policy Option 1. Section 6.2 includes analysis on the number of passenger ships of 100 gross tons and over registered in the Crown Dependencies and Overseas Territories that are UK owned, although this does not provide a complete picture of the UK owned ships that could be affected.

In addition, there are likely to be administrative costs to shipowners of doing this, such as the time taken to prepare and submit an application. However, no evidence is currently available on these costs, so it has not been possible to monetise these costs in this impact assessment.

#### *7.1.1.5.5. Other administrative costs to carriers & the marine insurance sector*

Carriers would be required to apply for compulsory insurance and financial guarantees. When applying for compulsory insurance or financial guarantees relating to war/terrorism, carriers would be likely to incur a small additional administrative cost because such cover is unlikely to be in place already. However, it is assumed that no such additional cost is likely for carriers applying for compulsory insurance or financial guarantees relating to non war cover if they already have this type of insurance cover.

When issuing financial guarantees on behalf of the carrier, the insurance industry would incur some costs but it is assumed that these are likely to be recovered. The costs of producing these financial guarantees would vary depending on the provider. It is not possible to quantify with any degree of accuracy the potential costs to the industry of issuing financial guarantees. There are a number of variables (i.e. employee costs, overheads, actual production of the financial guarantee, etc), and costs will vary between providers. However, the providers should already have the procedures in place to issue the financial guarantees in respect of the EU Regulation which introduced the 2002 Protocol into EU law, so it is assumed that the administrative costs for insurance providers would not therefore be significant.

It is assumed that the cost of establishing an administrative agency to issue war/terrorism guarantees would be absorbed into the overall cost of the war/terrorism cover. Whilst no evidence on these costs is available and it has not been possible to monetise these costs in this impact assessment, the cost of producing financial guarantees is not expected to result in a significant cost to the carrier.

Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.1.1.5.6. Monitoring & Enforcement*

Shipowners would need to ensure that State certificate(s) are available for examination at all times by Port State Control officers and other designated officials. However, this requirement would form part of the ships wider Port State Control commitments and would not result in any additional costs to the shipowner unless the ship is not in compliance with the requirements. Failure to provide the relevant paperwork would mean that the ship is liable to be detained and a shipowner would be deemed to have committed an offence if they were unable to provide evidence of compulsory insurance.

## **7.2. Benefits if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol**

There is uncertainty over which Crown Dependencies and Overseas Territories would ratify the 2002 Protocol under Policy Option 1

However, if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol under Policy Option 1, there could be additional benefits in relation to any voyages to which the 2002 Protocol would be additionally applied under Policy Option 1 compared to the 'Do Nothing' scenario (see Section 7.1 for more details of these voyages).

Table 5 summarises the potential additional benefits in relation to these voyages if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol under Policy Option 1, which could potentially include UK passengers travelling on these voyages.

It should be noted that any increase in the level of payments that are made to claimants as a result of increasing the limits of liability or the other changes discussed below would represent a transfer from business to claimants. Whilst this impact would be felt by insurance companies in the first instance, it is expected that any increased costs to insurance companies would be ultimately reflected in the level of premiums that are charged to the shipping industry.

**Table 5: Benefits if one or more of the Overseas Territories and Crown Dependencies ratify the 2002 Protocol**

Provision / Aspect		Benefit	Beneficiary
Strict Liability		Claimants would not bear the burden of proving fault or neglect for shipping-type incidents;	Claimant / Passenger
Compulsory Insurance, including right of direct action against the insurer	Non-war/terrorism cover	Insurance would help to ensure that claimants have access to adequate, prompt and effective compensation; insurance would also have benefits for businesses;	Claimant / Passenger / Business
	War/terrorism cover	Insurance would help to ensure that claimants have access to adequate, prompt and effective compensation in the event of incident occurring because of an act of war/terrorism; insurance would also have benefits for businesses;	Claimant / Passenger / Business
Limits of Liability	Death and Personal Injury	Increases in the amounts claimants could receive in compensation;	Claimant / Passenger
	Loss or damage to luggage and vehicles	Increases in the amounts claimants could receive in compensation;	Claimant / Passenger
Time bar Provisions		Claimants will have longer to lodge a claim against a carrier;	Claimant / Passenger

#### 7.2.1.1. Benefits to claimants / passengers

Application of the 2002 Protocol would make it easier for such claimants to obtain prompt and effective compensation for claims relating to the death of or personal injury to a passenger and damage to luggage or vehicles through:

- the application of higher limits of liability of the shipowner, for death and personal injury up to 400,000 SDRs with a requirement on the shipowner to maintain insurance or other financial security up to 250,000 SDRs;
- improved access to the available compensation through the application of strict liability of the shipowner (for shipping related incidents only);
- the right of direct action against the insurer up to the compulsory insurance level of 250,000 SDRs; and
- the application of higher limits of liability of the shipowner, for damage to or loss of luggage and vehicles up to a maximum of 5,625 SDRs for luggage and 12,700 SDRs for vehicles.

Some of the benefits to claimants / passengers are discussed in more detail in subsequent sections.

#### 7.2.1.2. Limits of liability – death and personal injury

The maximum amount of compensation that is available, in principle, to passengers would be increased compared to the limits in the Athens Convention (e.g. where the liability limit is increased from 46,666 to 400,000s SDR). In the event of death or serious injury, this is the increase in the maximum amount which could be claimed. Therefore, the increase in the maximum amount payable in the event of a casualty or fatality would be a direct benefit to claimants.

It is not known what number of claims currently made each year would exceed the current limits of liability if they did not apply, so it is not possible to monetise these benefits to claimants. Insurance providers, the shipping industry and other stakeholders were invited to submit any evidence that is available on the number of claims that are made each year, including what proportion would exceed the current limits of liability if they did not apply and the extent that such claims would exceed current limits. No further information was provided.

As explained above, it should be noted that any benefits to claimants would represent a transfer from business to claimants.

Under the 2002 Protocol carriers are also liable for terrorism related incidents to a limit of 250,000 SDRs per passenger, subject to an overall limit of 340 million SDRs. The fact that the shipowner is strictly liable and must maintain insurance, and there is direct action against the insurer itself should ensure that claimants have access to adequate, prompt and effective insurance in the event of death and personal injury as a result of a war/terrorism related incident.

#### *7.2.1.3. Limit of liability – loss of or damage to luggage and vehicles*

The amount of compensation that is available, in principle, to claimants whose luggage or vehicle is lost or damaged in an incident at sea on an international voyage would be increased by a maximum of around £1,400 per person, per carriage for luggage and around £9,300 for vehicles compared to the limits in the Athens Convention. There is no data available on the number of incidents that occur per year which involve the loss of or damage to luggage or vehicles on seagoing voyages, or the level of those claims. It is therefore not possible to make any estimate of the potential benefits to claimants of the increases in the limits of liability under Option 1. Consultees were invited to submit any additional evidence that is available on the number of claims per year which involve the loss of or damage to luggage or vehicles. As explained above, it should be noted that any benefits to claimants would represent a transfer from business to claimants.

#### *7.2.1.4. Strict liability*

The benefits of strict liability are considered to be as follows:

- Promotion of care – it protects the public from dangerous practises;
- Deterrent – offenders obey the law because they know prosecution leads to an automatic conviction;
- Easier enforcement – court time is saved when *mens rea*<sup>27</sup> need not be proved; and
- Difficulty of proving *mens rea* – *mens rea* can be difficult to prove so without strict liability guilty people may avoid conviction;

No evidence is currently available to enable the potential benefits of this aspect of Option 1 to be quantified at this stage. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.2.1.5. Direct-action against the insurer*

A direct-action lawsuit is brought directly against an insurance company for a wrong done by the insured. In a lawsuit that is not direct-action, a plaintiff brings the claim against the insured. To help the claimant avoid the extra cost, time and process required to obtain a judgment in a court of law, the 2002 Protocol enables action to be brought directly against the insurance company up to the 250,000 SDR compulsory insurance threshold. No evidence is currently available with regard to the additional cost and time a claimant must invest to pursue a shipowner where direct action against the insurer is not available. It has not therefore been possible to quantify this aspect of the potential benefits of Option 1. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.2.1.8. Time bar provisions*

Claimants would have longer to lodge a claim against the carrier and the insurance provider. However, it is not known whether the numbers of claims that are submitted towards the end of the time limit are significant, and therefore whether this aspect of Option 1 would result in significant benefits. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.2.1.9. Benefits to business of increased insurance coverage*

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<sup>27</sup> *Mens rea* is Latin for "guilty mind".

There are a number of potential benefits to businesses that obtain additional insurance coverage. This includes a) the transfer of risk to the insurance company, which should be valued at the expected level of compensation that the business would receive in relation to the additional types of losses that would now be insured; b) potential administrative cost savings if the insurance company handles related claims; and c) potential benefits in terms of business recovery. No evidence on these potential benefits is currently available, so it has not been possible to estimate the scale of these potential benefits in this impact assessment. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

#### *7.2.1.10 Simplification benefits of a uniform approach to liability*

Option 1 would apply to all seagoing passenger ships on international carriage irrespective of size. Only ships that carry 12 or less passengers would not be required to have compulsory insurance. Where relevant, it is assumed that passengers would therefore experience a simplification benefit as their rights would be the same irrespective of whether the seagoing voyage they were taking was EU or international in nature. However, no evidence on these potential benefits is currently available, so it has not been possible to estimate the scale of these potential benefits in this impact assessment. Insurance providers, the shipping industry and other stakeholders were invited to submit any additional evidence that is available on the potential additional costs of this aspect, including the extent that this change would result in additional claims being submitted. No further information was provided.

### **7.3 Benefits associated with UK being able to issue State Certificates to vessels attesting that they have the appropriate level of insurance in place at international level under the terms of the 2002 Protocol**

The benefit of being able to issue a single certificate that is recognised for both the purposes of shipowners or operators complying with the EU Regulation (when in EU waters) and the 2002 Protocol (when in non-EU international waters) will remove any risk that certificates cannot be accepted and recognised in other State parties. In the absence of any evidence on the costs associated with this potential issue, it has not been possible to monetise this potential benefit.

### **7.4 Costs and benefits of revoking redundant legislation under Red Tape Challenge**

There would be no additional costs or benefits because this is redundant legislation.

### **7.5 Monitoring & Enforcement in the UK**

UK enforcement measures introduced for the purposes of the EU Regulation already meet the UK's obligations under the 2002 Protocol. So no new processes, procedures, offences or penalties need to be created for the purposes of enforcing the 2002 Protocol.

## **8. Risks and assumptions**

The main risk of doing nothing arises from not being able to ratify the 2002 Protocol, and therefore having to manage potential requests to extend the 2002 Protocol to the Overseas Territories and Crown Dependencies, and requests for State Certificates that meet the requirements of the 2002 Protocol, on this basis.

No risks have been identified in the case of Option 1.

## **9. Wider impacts**

### 9.1 Small Firms Impact Test

Given the uncertainty over the extent that any UK businesses would be affected, the extent that there would be any impacts on small firms is uncertain.

However, whilst a carrier shall be liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, it should be noted that the 2002 Protocol only requires carriers to have compulsory insurance if the vessel is licensed to carry more than 12 passengers.

## 9.2 Micro Businesses

Due to the scope of the 2002 Protocol, micro businesses are not exempt from Option 1.

## 9.3 Competition Assessment

Option 1 may have some limited impact on participants in the affected markets.

### *Shipping industry*

If the 2002 Protocol is extended to the Overseas Territories and Crown Dependencies, UK businesses which operate non-EU flagged passenger vessels could potentially face increased liabilities, even in the absence of fault, for incidents involving the death of, or personal injury to passengers; and may therefore need to take out increased levels of insurance cover.

It is possible that, if there is an increase in premiums, they may be absorbed by carriers, or any increase in premiums may be passed on to passengers by way of increased fares.

To the extent that there is competition between the shipping and aviation sectors on affected routes, it is considered that there is only a small possibility that any obligation may potentially have an impact on competition between the shipping and aviation sectors.

### *Insurance industry*

There are 13 clubs in the IGP&I Clubs. Five of them are based in the UK. *The world merchant fleet in 2011, Statistics from Equasis*<sup>28</sup> indicates that for vessels over 500GT contained in the Equasis database, for which data has been supplied, the IGP&I Clubs provide P&I insurance to approximately 45% of the passenger ships and approximately 84% of these ships by tonnage. The IGP&I Clubs are mutual non profit making organisations operated by the shipowners themselves and are unlikely to have problems with competition irrespective of the preferred Option.

Those ships which are not entered with the IGP&I Clubs are likely to be entered with premium based insurers where the level cover required will correlate closely with the premiums charged.

The requirement under the 2002 Protocol for the shipowner to maintain compulsory insurance not less than 250,000 SDR per passenger and the need for State Parties to attest that such security is in place before issuing State certification against certain criteria (e.g. a high credit rating) are designed to ensure the robustness and effectiveness of insurance products. Given the high limits of liability, there is a possibility that the smaller premium based insurers will not be able to compete with the IGP&I Clubs. Consultations with the industry suggest that while the majority of large passenger ships insure themselves with the IGP&I Clubs, there is a tendency for smaller ships to insure with premium based insurers. If the 2002 Protocol is extended to the Overseas Territories and Crown Dependencies, Option 1 might therefore have a small impact on competition in the insurance industry.

## 9.4 Health and Well-being Impact Assessment

Having in place a robust and effective liability regime that ensures passengers are able to obtain adequate and prompt compensation in the event of an accident at sea that results in personal injury would have a positive impact on the health and well-being of the individual. The greater the coverage of the 2002 Protocol, the greater the number of passengers that would be able to access benefits. So, there could be health benefits if the 2002 Protocol is extended to the Overseas Territories and Crown Dependencies.

The provision of compensation should assist the individual recover from the event by compensating for any lifestyle variables which have either been compromised as a result of the incident (e.g. the level of physical activity that they are able to undertake) or have derived from the incident itself (e.g. stress and trauma).

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<sup>28</sup> <http://emsa.europa.eu/implementation-tasks/equasis-a-statistics/download/1933/472/23.html>



A full health impact assessment is not considered necessary because the 2002 Protocol will have a positive impact on the health and well-being of individuals and will not have a significant impact on human health nor will it create a significant demand on health or social care services. Indeed, the establishment of a compensation and liability regime should give further encouragement to owners to maintain a safe passenger ship because of the high limits of liability.

#### 9.5 Justice System Impact Assessment

The 2002 Protocol has already been introduced into EU law, and the UK enforcement measures introduced into domestic law for these purposes will also meet the UK's obligations under the 2002 Protocol. So no new penalties or offences are necessary for the purposes of ratification. Therefore, no Justice impact assessment is necessary for Option 1.

#### 9.6 Environmental & Carbon Impact

Option 1 would not have any adverse environmental or carbon impact.

#### 9.7 Race, Disability and Gender Impact Assessment

Option 1 has been assessed for relevance but the measure is not going to have any variation in impact on different groups; an Equalities Impact assessment is therefore not required.

#### 9.8 Human Rights

We believe that the Minister would be able to make the following statement: "In my view the provisions are compatible with the Convention rights."

### **10. Summary and Preferred Option**

Although the key provisions of the 2002 Protocol have already been introduced into EU law there is a need for the UK to ratify the Protocol. Without ratification, there is a risk that UK registered vessels could be unnecessarily held up or detained in ports of States who have ratified the 2002 Protocol, causing inconvenience to passengers. Additionally, without ratifying the 2002 Protocol, neither UK Overseas Territories nor Crown Dependencies will be able to have the 2002 Protocol extended to them, even if they wish it.

Adopting Option 1 of this Impact Assessment – allowing for the UK to ratify the 2002 Protocol – will remove the risk that UK registered vessels could be unnecessarily held up or detained in ports of States who have ratified the 2002 Protocol, and enable the 2002 Protocol to be extended to the Overseas Territories and Crown Dependencies, should they so wish it.

For these reasons, Option 1 is the only option that satisfies the policy objectives identified in this impact assessment.

### **11. One in Two Out**

Although the 2002 Protocol is of international origin, the requirements of two EU Council Decisions (2012/22/EU and 2012/23/EU) necessitate Government intervention to ratify the 2002 Protocol. Option 1, which contains the bare minimum necessary for the UK to ratify the 2002 Protocol, is therefore out of scope of the One-In-Two-Out (OITO) rule.

There is also one domestic element to this measure. This is to revoke some related domestic legislation identified as being redundant as part of the Red Tape Challenge. As this is redundant legislation, there are no impacts on business from making this change. Therefore, the domestic element of this measure is also classified as out of scope of OITO.

## 12. Post Implementation Review (PIR) Plan

When the UK implemented Regulation (EC) 392/2009 giving effect of the key provisions to the 2002 Protocol, it was confirmed by the UK implementing regulation (The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 (2012 No. 3152) that the Secretary of State would carry out a review from time to time, with the first report being published before 12 January 2018. Given that the provisions of the 2002 Protocol and subsequent ratification are exactly the same in nature, content and objective, it is sensible to review the ratifying regulations at the same time, and to be published jointly.

## 13 . References

No	Legislation or publication
1	The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974; <a href="http://www.admiraltylawguide.com/conven/passengers1974.html">http://www.admiraltylawguide.com/conven/passengers1974.html</a>
2	The Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987; <a href="http://www.legislation.gov.uk/uksi/1987/670/contents/made">http://www.legislation.gov.uk/uksi/1987/670/contents/made</a>
3	The Carriage of Passengers and their Luggage by Sea (United Kingdom Carriers) Order 1998; <a href="http://www.legislation.gov.uk/uksi/1998/2917/contents/made">http://www.legislation.gov.uk/uksi/1998/2917/contents/made</a>
4	The Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998; <a href="http://www.legislation.gov.uk/uksi/1998/1258/contents/made">http://www.legislation.gov.uk/uksi/1998/1258/contents/made</a>
5	The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974; <a href="http://folk.uio.no/erikro/WWW/corrqr/prot.pdf">http://folk.uio.no/erikro/WWW/corrqr/prot.pdf</a>
6	EU Regulation No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0024:0046:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0024:0046:EN:PDF</a>
7	Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0018:19980604:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0018:19980604:EN:PDF</a>
8	The Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 (2012 No. 3152) <a href="http://www.legislation.gov.uk/uksi/2012/3152/made">http://www.legislation.gov.uk/uksi/2012/3152/made</a>