EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA) ORDER 2014

2014 No. XXXX

1. This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 The purpose of the instrument is to amend the Merchant Shipping Act 1995 in consequence of the ratification by the United Kingdom of the International Maritime Organisation's ("IMO's") Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("the 2002 Protocol"). The 2002 Protocol amends the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("the Convention"). The 2002 Protocol only applies to international carriage, but the instrument also ensures that the application of the Convention to domestic carriage remains in place.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The United Kingdom has ratified the Convention which is given legal effect through what is now section 183 of and Schedule 6 to the Merchant Shipping Act 1995 ("the Act"). The Convention established a regime which allows carriers to limit their liability for loss of life or injury to passengers on international voyages to 46,666 Special Drawing Rights ("SDRs") – a virtual currency used by the International Monetary Fund – per passenger. As of 27th January 2014, 1 SDR is equal to approximately £0.93).

4.2 Section 183 of the Act provides that the provision of the Convention set out in Part I of Schedule 6 have the force of law in the United Kingdom. Part II of Schedule 6 makes supplementary provision in relation to the Convention. Section 184 of the Act enables the provisions of Schedule 6 to be applied to the carriage of passengers where the places of departure are within the British Islands (that is, the United Kingdom, the Channel Islands and the Isle of Man) and there is no intermediate port of call outside those islands. This was done through the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 (S.I. 1987/670). The limit of liability of a carrier whose principal place of business is in the UK and the voyages are within the British Islands has been progressively raised and now stands at 300,000 SDRs per passenger.

4.3 Section 315(2) provides that any provision of the Act or an instrument made under it may be extended to any British possession.

4.4 The 2002 Protocol increases the liability limits for carriers in the event of accidents involving loss of life or personal injury to 400,000 SDRs per passenger. It also requires such carriers to have compulsory insurance; and it provides claimants with the right of taking direct action against the insurers. The 2002 Protocol comes into force internationally on 23 April 2014. The United Kingdom is a signatory to the Protocol and has ratified it. The text of the 2002 Protocol was laid before Parliament in November 2013.

4.5. The provisions of the Athens Convention as amended by the 2002 Protocol are part of the law of the United Kingdom by virtue of Regulation (EC) No. 392/2009 of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents (O.J. L131, 28.5.2009, p.24) ("the EU Regulation"), which applied from 31st December 2012. The EU Regulation also incorporated the provisions of the IMO's Reservation and Guidelines ("the IMO Reservation") relating to war and terrorism insurance. Further related provision was made in the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 (S.I. 2012/3152). Those regulations amended the Act by adding a new subsection to section 183 of the Act which provided that it would no longer apply to cases where the EU Regulation applied.

4.6 The instrument replaces the provisions of the Athens Convention set out in Part I of Schedule 6 with the provisions of the convention as modified by the 2002 Protocol. I t also amends Part II of Schedule 6 to reflect the new higher limit of liability and the fact that the ratification of the 2002 Protocol is subject to the IMO Reservation. The instrument ensures that the operation of the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 is not affected by the changes being made to Schedule 6. The instrument also revokes The Carriage of Passengers and Their Luggage By Sea (Interim Provisions) Order 1980 (SI 1980 No. 1092), which relates to contracts made before 30 April 1987 which is redundant.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 Stephen Hammond, Parliamentary Under-Secretary, has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (Convention Relating to the Carriage of Passengers and their Luggage by Sea) Order 2014 are compatible with Convention rights."

7. Policy background

7.1 The 2002 Protocol increases the limits of liability that currently exist under the Athens Convention to 400,000 SDRs per passenger in the event of death or personal injury. It also requires carriers to maintain compulsory insurance (of 250,000 SDRs per passenger) on a strict liability basis, and it provides claimants with the right of taking direct action against the insurer.

7.2 The instrument is required to amend UK legislation as a consequence of the ratification by the UK of the 2002 Protocol which will strengthen the international framework for providing compensation in the event of death or personal injury to a passenger, or the loss of or damage to luggage, when travelling by sea on an international voyage.

7.3 By ratification of the 2002 Protocol and making the consequential amendments to Schedule 6 of the Merchant Shipping Act, 1995, Overseas Territories and Crown Dependencies will be able to have the 2002 Protocol extended to them.

8. Consultation outcome

8.1 UK ratification of the 2002 Protocol formed a part of the Department's six week consultation (16th August – 28th September 2012) on the implementation of Regulation (EC) 392/2009, reflecting the targeted approach and specialised nature of the subject matter. Only 5 responses were received, most notably from the Chamber of Shipping and the International Group of Protection and Indemnity Clubs, and these were supportive of the UK's approach. On the specific question around ratification, the UK's approach proposed that, whilst the 2002 Protocol would come into force once a minimum of ten State Parties had ratified it, the UK would wait until the tenth State Party had done so.

8.2 At the time of the consultation, respondents were invited to provide any new or additional evidence or information to help improve the quality of the cost and benefit analysis but no additional material was forthcoming. Equally, respondents did not express any objections or make any further comments regarding the original assessments that were made and which had formed the original assumptions of the Impact Assessment.

8.3 The summary of responses to that consultation, as well as the Government response to the points raised following the consultation, were published on the DFT website at the time.

9. Guidance

9.1 For the purposes of the UK's implementation of EU Regulation (EC) 392/2009, the Marine and Coastguard Agency ("MCA")which is an executive agency of the Department, issued a Marine Information Note (MIN 448(M)) to notify stakeholders of the entry into force of the EU Regulation. The MCA will also produce a further note in order to inform ship-owners and operators of the UK's ratification of the 2002 Protocol. This note will also explain what the practical effects of ratification will be.

10. Impact

10.1 An Impact Assessment ("IA") No.DfT00242 has been prepared for this Order. However, although key external stakeholders were invited to contribute to the IA, the available evidence base continues to have a number of limitations. Given the significant uncertainties surrounding the impacts of this measure (e.g. the number of Overseas Territories and Crown Dependencies that would choose to ratify the 2002 Athens Protocol is uncertain) and the limitations of the available evidence base, it has not been

possible to monetise any of the costs and benefits in this IA. However, the IA does provide a full qualitative description of the impacts. The Regulatory Policy Committee has reviewed the IA and concluded that it is fit for purpose.

10.2 There will be no impact on the public sector. Under the provisions of the EU Regulation, the Maritime and Coastguard Agency is already required to check that ships entering UK ports carry the appropriate level of war and non-war insurance cover which complies with the requirements of the EU Regulations. A satisfactory check will generate a certificate issued by the MCA. The certificate attesting that insurance is in place will be also valid for UK vessels that operate outside EU waters, so there will be no additional costs or burdens on UK operators or ship-owners. Any familiarisation costs are expected to be insignificant, as the necessary training would be absorbed into normal Port State Control procedures. The cost of obtaining the Port State Control certificates will be £31.00 annually per certificate and issued by MCA. This figure has been agreed with HM Treasury and will operate under full cost recovery principles.

10.3 The IA is attached as an annex to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 Whilst a carrier is liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the 2002 Protocol only requires carriers to have compulsory insurance if the ship is licensed to carry more than 12 passengers. Both the 2002 Protocol and the EU Regulation lay down a regime relating to liability and insurance for the carriage of passengers by sea. The UK defines sea, for the purposes of Merchant Shipping legislation as being seaward of categorised waters. Services on inland waterways such as rivers and lakes are therefore outside the scope of the 2002 Protocol. It is considered that these two criteria help to significantly reduce the impact of the 2002 Protocol on small firms.

11.2 By the time this measure enters into force the Micro-Business Moratorium will no longer apply. However, given the uncertainty over the impact generally and also the extent that any UK businesses would be affected by this measure, the degree that there would be any impacts on small firms is equally uncertain.

12. Monitoring and review

12.1 Provision has been made for a review of the changes to the Merchant Shipping Act associated with ratification of the 2002 Protocol and for the conclusions of that review to be published. The first report must be published before 23rd April 2019, and every five years thereafter. Since the instrument does not affect the operation of the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order 1987 it has not been considered necessary to introduce a review provision into that instrument.

13. Contact

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