

Marine Notice No. 02 of 2013

Notice to all Passenger Ship Owners, Operators, Masters, and Agents.

Liability of Carriers of Passengers by Sea in the Event of Accidents

The purpose of this Marine Notice is to draw attention to *Regulation (EU) 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*, which came into force in all Member States on the 31 December 2012. This Marine Notice and Appendix contains a summary of the main elements of the EU Regulation but reference must be made to the EU Regulation and national regulations for full details.

Regulation (EU) No 392/2009 incorporates the provisions of the 2002 protocol to the Athens Convention relating to the carriage of passengers and their luggage by Sea, 1974, with some additions into EU Law. The 2002 Protocol introduces compulsory insurance to cover passengers on ships and raises the limits of liability. A copy of the EU Regulation is [here](#) for your information. The provisions of the Athens Convention as amended by the 2002 Protocol are included at Annex I of the EU Regulation.

The EU Regulation applies to all carriers in international carriage, including carriage between EU Member States, and extends the provisions of the Athens protocol to certain types of domestic carriage, provided that;

- the ship is flying the flag of a Member State or is registered in a Member State, or
- the contract of carriage has been made in a Member State , or
- the place of departure or destination or both, according to the contract of carriage, are in a Member State.

It covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment in the event of accidents. Accidents under the EU Regulation include both 'shipping'¹ and 'non-shipping' incidents in the course of the carriage.

The carrier or performing carrier shall ensure that passengers are informed clearly and precisely of their rights under the EU Regulation. The information shall be provided in the most appropriate format:

- at all points of sale, including by telephone and via the Internet where the contract of carriage is signed in a Member State;

¹ 'Shipping incident' for the purposes of this Regulation include: shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship. All other incidents in the course of the carriage for the purposes of this notice are 'non-shipping' incidents.

- prior to departure where the place of departure is in a Member State;
- upon departure in all other cases.

Appendix 1 to this notice provides a Summary of provisions concerning the rights of passengers travelling by sea in the events of accidents, and carriers shall provide at least the information contained in the Appendix to passengers.

The 2002 Protocol to the Athens Convention provides for insurance cover² of 250,000 SDR (approx. €295,000) for each individual passenger. 2,250 SDR (approx. €2,655) for loss or damage to cabin luggage per passenger. 12,700 SDR (approx. €14,986) for loss or damage per vehicle including luggage. 3,375 SDR (approx. €3,985) for loss or damage to other luggage per passenger. Carriers must maintain insurance and claims for compensation can be brought directly against the insurer up to this amount. If the loss exceeds the limit, the carrier is further liable up to a limit of 400,000 SDR (approx. €472,000) for the death or personal injury to a passenger unless the carrier proves that the incident or loss occurred without the fault or neglect of the carrier.

If mobility equipment or any other equipment used by a passenger with reduced mobility is lost or damaged, the carrier shall be liable if the loss arising is the result of a fault or neglect on their part.

In the event of death or personal injury to a passenger caused by a shipping incident, the carrier responsible for all or part of the carriage shall make an advance payment proportionate to the damages suffered. However, this advance payment shall not constitute recognition of liability.

Carriers are required to provide evidence of insurance and the insurance cover required by the regulation must be verified by a certificate issued by the state where the ship is registered.

To apply for certification, the owner of a ship which has been granted the right to fly the Irish flag to which this regulation applies should contact: The Chief Surveyor, Marine Survey Office (MSO), Department of Transport, Tourism and Sport, Leeson Lane, Dublin 2.
Email: mso@dtas.ie, Fax: +353 (01) 6783409, Telephone: +353(01) 6783400.

[\[S.I. No. 686 of 2011\]](#) — European Union (Insurance of Shipowners for Maritime Claims) Regulations 2011 which give effect to Directive 2009/20/EC obliges all ships to have insurance in place and to carry the relevant certificates on board. The owner or master of a ship flying a flag other than that of the State is also legally required to furnish details of the insurance to the state in advance of entry into Port. Failure to comply with S.I. No. 686 of 2011 may result in detention or expulsion of the vessel.

² Loss or damage suffered as a result of an accident are calculated on the basis of "units of account", which are either "Special Drawing Rights" (SDR) for Member States parties to the International Monetary Fund (all EU Member States). Information and conversion rates for SDR can be found on: <http://www.imf.org/external/np/exr/facts/sdr.htm>. On 26 November 2012 1 SDR = 1.18 EUR

The MSO are designated as the competent authority in the state for the purposes of giving effect to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 and Commission Directive 96/40/EC of 25 June 1996 on port state control via [S.I. No. 656 of 2010](#). This provides them with powers to request and inspect certificates required under Regulation (EC) No 392/2009 and vessel owners will be asked for insurance certificates during Port State Control inspection.

The European Union (Liability of Carriers of Passengers by Sea) Regulations 2012 [S.I. No. 552 of 2012](#) which applies from 31st December 2012 gives full effect to Regulation (EU) No 392/2009. The Regulations defers the application of Regulation (EC) No 392/2009 to class B ships travelling within the State until 31st December 2018 in accordance with article 11.2 of the EU Regulation and provides for prosecution and fines of up to €5,000 on summary conviction for failure to comply with the requirements of the EU Regulation.

S.I. No. 552 of 2012 also gives effect to EU Council decisions 2012/22/EU and 2012/23/EU concerning the accession of the EU to the 2002 Protocol to the Athens Convention. The Instrument amends the Merchant Shipping (Liability of Shipowners and Others) Act 1996 to give the force of law to the 2002 Protocol to the Athens Convention. The Minister will make a further order bringing Regulation 10 of S.I. No. 552 of 2012 into operation when the 2002 Protocol to the Athens Convention comes into force internationally.

Director General,
Maritime Safety Directorate,
Department of Transport, Tourism and Sport,
Leeson Lane, Dublin 2, Ireland.

(Encl: Appendix 1)

08 /01/2013

<p>For any technical assistance in relation to this Marine Notice, please contact: The Marine Survey Office, Leeson Lane, Dublin 2, tel: +353-(0)1-678 3400. For general enquiries, please contact the Maritime Safety Policy Division, tel: +353-(0)1-678 3418. Written enquiries concerning Marine Notices should be addressed to: Maritime Safety Directorate, Department of Transport, Tourism and Sport, Leeson Lane, Dublin 2, Ireland. email: marinenotices@dtas.ie or visit us at: www.dttas.ie</p>
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APPENDIX 1

[The carrier shall provide at least the following information to the passengers prior to or on departure, to the extent that Regulation (EC) No 392/2009 applies to their carriage]

Summary of provisions concerning the rights of passengers travelling by sea in the event of accidents³

Regulation (EC) No 392/2009 on the liability of carriers of passengers in the event of accidents becomes applicable in the EU and EEA States⁴ on 31 December 2012. It incorporates certain provisions of the 1974 Athens Convention (as amended by the 2002 Protocol) relating to the carriage of passengers and their luggage by sea.

The Regulation applies to all carriers in international carriage, including carriage between EU Member States, and certain types of domestic carriage, provided that:

- the ship is flying the flag of a Member State or is registered in a Member State, or
- the contract of carriage has been made in a Member State, or
- the place of departure or destination or both, according to the contract of carriage, are in a Member State;

It covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment in the event of accidents.

This Regulation does not affect the right of carriers to limit their liability for accidents in accordance with the International Convention on Limitation of Liability for Maritime Claims of 1976, as amended by the 1996 Protocol in its up to date form.

Accidents under the Regulation include both 'shipping'⁵ and 'non-shipping' incidents in the course of the carriage.

RIGHTS OF PASSENGERS

Right to compensation for death or personal injury

Shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 250.000 SDR⁶ in any event, with the exception of circumstances beyond the carrier's control (i.e. act of war, natural disaster, act of a third party). Compensation can go up to 400.000 SDR unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 400.000 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

³ Summary drafted in accordance with article 7 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 (OJ L 131, 28.5.2009, p. 24) on the liability of carriers of passengers by sea in the event of accidents. This summary has no legal value.

⁴ The Regulation will become applicable to EEA States in accordance with the Decision of the EEA Joint Committee No 17/2011 (OJ L 171, 30.6.2011, p. 15) following the relevant notifications by EEA States concerned.

⁵ 'Shipping incident' for the purposes of this Regulation include: shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship. All other incidents in the course of the carriage for the purposes of this summary are 'non-shipping' incidents.

⁶ Loss or damage suffered as a result of an accident are calculated on the basis of "units of account", which are either "Special Drawing Rights" (SDR) for Member States parties to the International Monetary Fund (all EU Member States). Information and conversion rates for SDR can be found on: <http://www.imf.org/external/np/exr/facts/sdr.htm>. On 26 November 2012 1 SDR = 1.18 EUR

Right to compensation for loss of or damage to cabin luggage

Shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

Right to compensation for loss of or damage to luggage other than cabin luggage

The passenger has a right to compensation from the carrier of up to 12.700 SDR (vehicles, including luggage carried in or on the vehicle) or 3.375 SDR (other luggage), unless the carrier proves that the incident occurred without his fault or neglect.

Right to compensation for loss of or damage to valuables

The passenger has a right to compensation from the carrier of up to 3.375 SDR for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments and works of art, only when these have been deposited with the carrier for the agreed purpose of safe-keeping.

Right of a passenger with reduced mobility to compensation for loss of or damage to mobility equipment or other specific equipment

Shipping incident: The passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: The passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, if he/she proves that the incident was the result of the carrier's fault or neglect.

Right to an advance payment in the event of a shipping incident

In case of death or personal injury, the passenger or other person entitled to damages has a right to an advance payment to cover immediate economic needs. The payment shall be calculated on the basis of the damage suffered, shall be made within 15 days and shall not be less than 21,000 EUR in the event of death.

ELEMENTS OF PROCEDURE

Written notice

In case of damage to cabin or other luggage, the passenger must give timely⁷ written notice to the carrier. Failure to do so will result in the passenger losing his/her right to compensation.

Time limits for exercise of the passenger's rights

In general, any action for damages before a competent court must be introduced within a period of 2 years. The starting point of this limitation period may differ depending on the nature of the loss.

⁷ In cases of apparent damage, written notice must be given before or at disembarkation for cabin luggage, and before or at re-delivery for other luggage. In cases of non-apparent damage to or loss of luggage, written notice must be given within 15 days from disembarkation or re-delivery (or scheduled re-delivery in the event of loss).

Exemptions concerning liability

Liability of the carrier can be reduced if he proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger.

The limits on the different amounts for compensation will not apply if it is proved that the damage resulted from an act of the carrier, or a servant or agent of the carrier or of the performing carrier, done with the intent to cause such damage or with knowledge that such damage would probably result.

Director General,
Maritime Safety Directorate,
Department of Transport, Tourism and Sport,
Leeson Lane, Dublin 2, Ireland.

dd/mm/yyyy
(Amended dd/mm/yyyy)

Encl.: Annex

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