

THE P&I COLUMN



Jonathan Hare
Senior Vice President
Counsel
Maritime Law &
International Group
SKULD
www.skuld.com



The need for a publication entitled "Shipping Regulation and Guidance" is a clear illustration of the challenge faced by shipowners in keeping pace with new legislation. It is a challenge for shipowners and P&I clubs alike. We have to recognise that this is a feature of modern life – a belief that new laws are the solution for any problem. One small consolation is that shore based industries also face a similar barrage of new legislation.

What marks out shipowners from their shore based counterparts is the uniquely global nature of their business. Operators of ships trading worldwide are dependent on a certain degree of uniformity in order to remain in compliance. That is why P&I clubs and shipowners' organisations are constantly trying to limit regulation on a national or regional basis.

This is most frequently encountered by clubs in the context of shipowners' being required to demonstrate that they have adequate insurance in place as a condition of port entry. The consistent position taken by clubs is that the standard Certificate of Entry is sufficient. In addition, all thirteen clubs in the International Group have lists of vessels available on their websites which are updated at least once a day so it is easy enough to check on the authenticity of the Certificate. The clubs resist meeting additional local demands which go beyond simple confirmation of the main types of cover provided, with wreck removal being a common request. In the short run, it would save the individual shipowner time if the club provided a piece of paper which met the demands of a particular harbourmaster. However, for shipowners as a whole the relatively restrictive policy does provide the real benefit of preventing a proliferation of local demands which would inevitably lead to frustrating delays.

The EU Insurance Directive 2009/20/EC adopted in April 2009 (originally the Civil Liability Directive) is an example of legislation at a regional level. The Directive, which member states must implement by the end of 2011, will require ships to carry on board certificates proving the existence of P&I insurance. Clubs are working towards an acceptance by states that a Certificate of Entry will be sufficient and that no special European Certificate will be required.

A Certificate of Entry is exactly what it says – it certifies that a vessel is entered in a club but it is not a guarantee. Clubs do provide what are in effect guarantees but only in limited circumstances, namely under International Conventions and subject to Board approval. These are provided in an agreed form (known as a blue card) under the two Conventions which govern shipowners' liability for pollution caused by oil cargoes and by bunkers. Although the form of the document is agreed, the challenge here is in maintaining an agreed procedure. A large number of Certificates must be issued by flag states on an annual basis in the weeks leading up to the start of the P&I year on 20 February. The Certificates will only be issued by the flag state if they are in possession of a blue card issued by the shipowners' club. This has the potential to be a logistical nightmare. Fortunately, most states have agreed to accept blue cards which are transmitted electronically. This instantaneous transmission brings with it a huge benefit. There is therefore sufficient uniformity for the system to work. However, as new Conventions come into force there will be more Certificates to issue and more work to be done to encourage all states to co-operate by adopting uniform procedures and taking advantage of the benefits provided by modern methods of communication.

