



Department  
for Transport

# Government response to consultation

## Changes to domestic legislation implementing certain international maritime liability conventions

**Moving Britain Ahead**

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# 1. Overview

The consultation sought views from the maritime sector on the Government's proposal to adopt, through secondary legislation, increases to the limits of liability under the Convention of Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol (LLMC). The new limits were agreed in 2012 and were adopted by the International Maritime Organisation in 2012, coming into force internationally on 8 June 2015.

As well as seeking views on the introduction of the new limits of liability, the Government also sought views on a small number of additional changes related to domestic maritime legislation. These additional measures consisted of:

- The introduction of an ambulatory reference to enable future increases to LLMC limits to be implemented without the need for further legislation or regulatory provision;
- Providing more generous limits for passenger claims by removing a ship-owners right to limit their liability for such claims under the LLMC, and;
- Providing discretionary powers to the Secretary of State over the issuance of State Certificates to non-UK flagged vessels for Bunkers Convention purposes.

The consultation asked industry if the Government's proposed approach to implementing these changes would achieve the right outcomes, and that taking the proposed approach would ensure that both administrative burdens and financial costs were kept to a minimum for the UK maritime sector. However, due to the limitations of the available evidence base, it was not possible to monetise these potential costs and benefits, and so consultees were urged to provide any additional information or evidence that could help better inform the evidence base used in the Impact Assessment which accompanied the consultation questions.

The comments of those organisations that responded are set out in the following document.

## 2. Background

The changes to legislation for which the consultation sought views are intended to incorporate the new, higher limits of liability agreed by tacit procedure in the International Maritime Organisation in April 2012, into UK domestic legislation. This in turn would require ship-owners and operators to have in place the relevant insurance to reflect those increased limits of liability. Our Impact Assessment (which formed part of the consultation) concluded that increases to the LLMC limits that have been adopted internationally should not introduce any new or additional costs to ship-owners in respect of insurance premiums that they pay since the increases are intended to reflect a realignment with inflation over the period of time between 1996 and 2012.

Furthermore, a new provision – an ambulatory reference – will also be included into UK legislation to allow for any such future increases agreed at international level to be adopted automatically, without the need to do so by further legislation.

In addition, there were two further proposals that the Government invited views on. Firstly, the Government's proposal to remove a ship-owners right to limit his liabilities for passenger claims under the LLMC, thereby giving passengers full access to the higher limits of the 1974 Athens Convention, as amended by the 2002 Protocol in the event of death or personal injury to passengers.

Second, to amend the UK domestic legislation relating to the International Convention on Civil Liabilities for Bunker Oil Pollution Damage 2001 ("the Bunkers Convention") in order to give the Secretary of State the necessary discretionary powers when issuing State Certificates to non-UK flagged vessels wishing to enter UK ports.

These proposals will require changes to the Merchant Shipping Act 1995 ("the Act"). For the LLMC increases and the ambulatory reference this will mean amending Article 6(1) of Part I of Schedule 7 of the Act; for the provision relating to the Bunkers Convention, section 164 of the Act will need amending. These amendments will be taken forward under a single statutory instrument. With regard to changes that would remove the right of ship-owners to limit their liabilities under the LLMC 96 in respect of death or personal injury to passengers (or loss or damage to luggage) covered under the Athens Convention (as amended by the 2002 Protocol) the outcome of the consultation indicated that this was more complex area address and had not been adequately covered under the consultation. A more detailed assessment is provided in the Government's response under Question 4.

The Impact Assessment made a number of assumptions around costs, benefits and burdens that may affect the UK shipping industry as a result. The consultation itself posed a number of questions and invited consultees to challenge those assumptions and, where it was possible to do so, provide additional evidence or analysis in order to better inform the Government of the possible impacts that might arise from introducing the proposed changes.

# 3. Summary of Responses

## Summary of Responses and Government Reply

The consultation was sent to 31 consultees, including the Devolved Administrations, shipping representatives and associations, maritime insurers, trade unions and independent maritime legal and academic professionals. Of these 6 responded, representing just over a 19% response rate.

Those that responded gave a broad endorsement of the Government's proposed changes, with the exception of the proposal to remove the ship-owners right to limit their liability for passenger claims. Industry raised a number of concerns regarding this proposal. This is discussed in more detail, as is the Government response, under Question 4 in the next section.

Otherwise, industry was content with the changes that the Government wished to proceed with.

## PART 1

### Question 1

**We would like to know if you are able to provide any additional evidence on the costs and benefits of our Impact Assessment. In particular, are you able to provide any evidence or data demonstrating how the increase in the limits of the LLMC may impact or translate into increased insurance premiums or other business costs? Furthermore, do you have any evidence on how the real cost of insurance compares now to that of 1996 and is this solely attributable to changes in inflation since 1996?**

Most of those who responded to the consultation were unable to provide any additional information or data to better inform the Government's initial assessment of impacts arising from the proposed increases.

The International Group of Protection and Indemnity Clubs (IGPANDI) explained that there are many circumstances and considerations to take account of when insuring a ship and these did not necessarily apply as a "one-size fits all", given the extreme diversity of the maritime industry and the commercial confidentialities within the market itself. However, IGPANDI did indicate that, *"While it is not possible to quantify any immediate increase in the cost of insurance in the event of higher limits, it is almost inevitable that if a major incident occurred that is subject to higher limits, then this would be reflected in increased premiums soon afterwards..."*

One consultee suggested that in order to provide legal clarity and certainty, any increases (now or in the future) should indicate the date from which they come into force.

The Government can confirm that under section 185 (2) (E) of the Act any Order that modifies any part of Schedule 7 of the Act (relating to the LLLMC Convention) does not have retrospective effect. Nonetheless, the Government notes the point and will, in future, make every effort to ensure that industry stakeholders are aware of this at an early stage in the consultation process.

## **Question 2**

**The increase in limits agreed by the IMO in 2012 only applies to vessels over 300gt. Do you believe that the limits for smaller vessels (under 300 gross tonnes) should also be increased in proportion to these new limits (historically, this has been to around 50% of any new limits under the LLMC)?**

IGPANDI, British Maritime Law Association, Hill Dickinson and the Chamber of Shipping saw no reason why the increases to LLMC should not be applied to smaller vessels to take account of the 50% increase agreed at IMO in 2012, but noted that the justification by the Government may have been to protect small business operators from being adversely impacted by a statutory increase.

In response, the Government has noted that industry broadly supports such an increase. However, as the Consultation Impact Assessment indicated, it was not a proposal that was to be taken forward in this current package and a cost and benefit analysis was not carried out and industry was unable to quantify the impacts for such smaller operators. The Government believes that whilst it may make sense to apply an equivalent 50% increase insurance liability cost to ship-owners of vessels under 300gt, there may also be an adverse effect on them. The Government acknowledges what industry has said, but would need to undertake a much more robust assessment of the potential impacts, and engage more directly with such operators, before taking this forward.

## **Question 3**

**Do you support the idea of an ambulatory reference being included to help speed up the implementation of those future increases to the LLMC limits agreed at international level by the International Maritime Organization? If not, please explain your reasons and provide any evidence or analysis that supports your view.**

Consultees supported the proposal to include an ambulatory reference specific to any future increases to the LLMC 96 limits. Hill Dickinson wished to know if such an ambulatory reference could be used to incorporate the UK small ship limit (as discussed above). While the government considers that this is possible there has not yet been any decision to increase the limits for vessels under 300 gt.

## **Question 4**

**Do you support the view that in the event of passenger claims, the higher limits under the Athens Convention (as amended by the 2002 Protocol) should be applied instead of those set out under the LLMC, which would have the effect of removing the ship-owner's right to limit his liability for passenger claims according to the LLMC?**

As part of the Government's consultation relating to the increases in the LLMC limits, we also sought responses from industry on the proposal to remove the ship-owner's right to limit his liability for passenger claims under LLMC. Industry rightly identified that under existing UK law, compensation and liability for death and personal injury claims will be governed in mostly all circumstances by the legislation implementing the Athens Convention, as amended by the 2002 Protocol (and where appropriate Regulation (EC) 392/2009), where such claims arise on seagoing vessels. It is only on non-seagoing vessels that the existing LLMC limits (Article 7) continue to apply to such claims. Also, the existing LLMC limits (Article 6) continue to apply for some claims relating to the loss or damage to passenger luggage and property, irrespective of whether the vessel is seagoing or not. Any removal of the right of ship-owners to limit under LLMC (Article 7) for death and personal injury claims would, therefore, have to be considered in the context of its effect on any non-seagoing vessel to which the Athens Convention (and Regulation (EC) 392/2009) do not apply, and to the extent any relevant, non-passenger carrying ships (e.g. where a passenger claim is brought against a non-passenger carrying ship in circumstances where such a ship has collided with a passenger carrying ship). However, industry felt that without the consultation showing exactly how removing the right to limit under LLMC was to be dealt with, as well as addressing the potential consequences and likely impact in more detail, it was not able to support the proposal. In light of these views, and the need for further work and consultation with industry, it is proposed that Option 3 will not now be taken forward at this time and so the existing arrangements will be retained.

#### **Question 5**

**Do you believe that this option will introduce significantly higher costs to ship-owners in respect of insurance premiums? If so, please indicate what those costs might be and provide any supporting evidence.**

This question is no longer applicable as the proposal has now been removed from the package of measures (see Government response to Question 4).

#### **Question 6**

**Do you have any evidence or information relating to whether or not any of the other Contracting Parties to the 2002 Athens Protocol have removed the right of ship-owners to limit their liability for passenger claims under LLMC?**

This question is no longer applicable as the proposal has now been removed from the package of measures (see Government response to Question 4).

#### **Question 7**

**Is our assessment of the cost and benefit of taking this option forward correct or do you have evidence or views to suggest otherwise?**

Whilst Hill Dickinson supported the proposal to give the Secretary of State discretionary powers when issuing State certificates under the provisions of the Bunkers Convention, IGPANDI did not believe either that (a) the current legal situation was "gold-plating" or (b) that it would make it more difficult for sub-standard vessels to operate. They did, however, support giving the Secretary of State discretionary powers. One consultee supported the proposal but also wondered whether or not the same issue applied elsewhere – to the Wreck Removal Convention or CLC.



The Government's view is that the obligation on the Secretary of State having no other choice but to issue a State certificate can be considered as "gold-plating" as it goes beyond what was originally contained in either the Bunkers Convention or the subsequent EU Council Decision<sup>1</sup> authorising Member States to ratify, sign or accede to the Convention, where the obligation on the Member State is that they *may* issue a State certificate, whereas the current wording requires the Secretary of State to issue one. Therefore, changing the wording can be seen as deregulatory because it removes gold-plating. Whilst the Government agrees with IGPANDI that this proposal in itself will not contribute to a reduction in the operation of sub-standard ships, it will act as a deterrent to such operators from attempting to obtain a State certificates from the UK and force them to seek such certification elsewhere, which may prove more problematic for them.

The proposed change in wording is not needed in relation to the issue of certificates relating to other Conventions under the provisions of the Merchant Shipping Act 1995, where the discretionary power already exists for the Secretary of State.

### **Question 8**

**Do you support the Government's preferred option of taking forward all of the above options as a package of measures or do you have concerns about the possible outcomes? Please provide evidence or further analysis if you would not support the Government's objectives**

All consultees supported taking forward this package of measures, with the exception of the one relating to removing the right of the ship-owner to limit their liability under LLMC 96 in the event of death or personal injury to passengers, or loss or damage to their luggage. This proposal has been removed and will be the subject of separate consideration following the helpful input from consultees.

One of the consultees raised one final point concerning an additional element that is missing from this package of measures. In relation to the Wreck Removal Act 2011 he has asked why, when the UK made its reservation when ratifying the LLMC 96, it had reserved the right to exclude the application of Article 2 (d) and (e), but had only carried through into domestic legislation Article 2 (d) (relating to wreck removal), not Article 2 (e), which relates to the removal or destruction or rendering harmless cargo of a wreck.

In response, the Government acknowledges the observation made by Professor Gatskill., but did not consider it necessary to take this point forward at this time. The matter was not covered in the package of proposed measures especially in respect of adopting the LLMC 96 increases, nor did it form part of the consultation, so it was not assessed in terms of impact or costs on the shipping sector.

### **Question 9**

**Are there any options that you would prefer to see not taken forward? Please identify which ones and give the reasons why you would not want to see them implemented.**

Most respondents raised concerns regarding the proposal to remove the ship-owners right to limit their liability under LLMC 96 in the event of death or personal injury to passengers

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<sup>1</sup> 2002/762/EC: Council Decision of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention)

or the loss or damage to their luggage. Their concerns are set out more fully (as is the Government's response) under the section covering Question 4.

## **Part 2**

### **Summary of requests for information set out in the Impact Assessment (IA)**

The Consultation document should be read in conjunction with the Impact Assessment that accompanied it and which provided detailed consideration of the costs and benefits to business associated with the Government's proposals.

However, due to the limited evidence base, despite the questions that Government asked, it was not possible to monetise any of the potential costs and benefits that were identified in the Impact Assessment.

None of the respondents were able to provide any new information that could help more fully inform the Government's consideration of the costs and the benefits of its proposals, nor did they make any comment regarding the assessments and analysis made by the Government in consideration of its assessment on costs and benefits. This was, and remains, largely due to the complex nature of the maritime insurance market and the different considerations that ship-owners and market-based insurers need to take account of before determining insurance premiums. Such considerations normally include the type of vessel being insured, its cargo, its area of operation, the resilience of the insurance market (itself partly determined by the number of incidents) and other such factors that may affect the overall risk

In the light of this, the Government has been unable to develop further its original assumptions and assessments (beyond a theoretical situation) and so the original analysis of cost and benefits has remained largely unaffected.

## 4. Conclusions and Next Steps

Based on the responses from those who responded to the consultation the Government can conclude that it will proceed with the proposed package of measures, excluding that around the option of removing the ship-owner's right to limit their liability under LLMC in respect of death or personal injury to passengers, or loss or damage to their luggage.

The Government is also grateful for the consideration that consultees have given in respect of the impacts and costs likely to fall on the maritime sector and that the Government's Impact Assessment provided a fair and, as far as possible, accurate assessment of the real effects of the proposed measures.

On that basis the Government will now proceed to lay the relevant Order in Parliament.

## 5. List of Respondents who provided comments

1. **International Group of P&I Clubs**
2. **UK Chamber of Shipping**
3. **Hill Dickinson LLP**
4. **British Maritime Law Association**
5. **Holman Fenwick Willan LLP**
6. **Nicholas Gaskell, Professor of Maritime and Commercial Law, University of Queensland**