

Title: Increases to the limits of liabilities under the IMO Convention on Limitation of Liability for Maritime Claims (LLMC) 1996 IA No: DfT00329 RPC Reference No: RPC-3029(1)-DfT Lead department or agency: Department for Transport Other departments or agencies:	Impact Assessment (IA)			
	Date: 31/03/2016			
	Stage: Final			
	Source of intervention: International			
	Type of measure: Secondary legislation			
Contact for enquiries: Andrew Kelly; Andrew.kelly@df.t.gsi.gov.uk;				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0m	-£0.1m	£0m (NQRP) £0m (QRP)	Not in scope	Qualifying provision

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

The framework which allows ship-owners to limit their liability has not been increased to reflect inflation since 1996, such that compensation levels may not necessarily cover the cost of shipping related incidents. In addition, maritime legislation in this area is complex and difficult for industry to easily understand. Furthermore, a change to the Bunker Convention is required to provide the Secretary of State with the discretionary power in the issuance of Port State Certificates in line with the original intention. Government intervention is required to implement the increases to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) 1996 limits into UK law and amend existing legislation.

What are the policy objectives and the intended effects?

The policy objectives are: (1) to implement the increase to the limits of liability currently set out in the Protocol of 1996 to the LLMC to ensure public sector, businesses and individuals receive prompt and adequate compensation in the event of an incident; (2) to facilitate future increases to these limits without the need for further implementing legislation through an ambulatory reference; and (3) to provide discretionary powers to the Secretary of State when issuing Port State Certificates to non-UK flagged vessels for the purposes of the Bunkers Convention.

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

Four policy options have been considered:

- (1) increase the limits to liability in line with those agreed internationally;
- (2) implement option (1) and include ambulatory referencing such that future increases agreed at the international level are adopted automatically into UK law;
- (3) Amend UK legislation to allow SoS to use discretion in the issuance of State Certificates for Bunker Convention; and
- (4) implement all of these options. The preferred policy option is Option 4, to implement all of these options.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 10/2021				
Does implementation go beyond minimum EU / International requirements?			No	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	
			Non-traded:	

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: John Hayes Date: 03/11/2016

Summary: Analysis & Evidence

Policy Option 1

Description: Implement increase to the LLMC limits of liability adopted by the International Maritime Organisation (IMO) in 2012 to ensure the public sector, businesses and individuals receive prompt recompense for the recovery of costs incurred and also adequate compensation.

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.0	High: 0.0	Best Estimate: 0.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	0.0	0.2

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

The costs of the increased limits to third-party liability for ship-owners has been estimated at £64,732.85 per year (spread across roughly 1000 ships). This is most likely to be borne by ship-owners in terms of increases in insurance premia, though may be partially borne by the insurance industry if rises in insurance premia don't fully reflect the increase in pay-outs. The increase to the limits broadly reflects inflation since 1996, such that real costs would be brought back to the 1996 level.

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

No additional non-monetised costs

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	0.0	0.2

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

The benefits of the increased limits to liability has been estimated at £64,732.85 per year (i.e. equal to the costs). This will be a transfer from ship-owners and the maritime insurance industry, to third parties incurring losses, damaged property or environmental damage as a result of shipping incidents (most likely cargo owners and government). A conservative assumption has been used that none of the benefits fall to businesses.

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

No additional non-monetised benefits.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The increase in liability limits agreed by the IMO is based on CPI and the GDP inflation rate. We have assumed in our analysis that the risk of an incident incurring costs greater than the old LLMC limits is the same in the UK as the rest of the world. This is a very conservative assumption as UK registered ships have not been involved in any such incidents over the past 10 years.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	
			0.0

Summary: Analysis & Evidence

Policy Option 2

Description: Incorporates Option 1 above and also facilitates future increases to the LLMC limits of liability without the need for further implementing legislation by means of an ambulatory reference.

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: 0.0	High: 0.0	Best Estimate: 0.0	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional	N/A	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0.0		0.0		0.2	
Description and scale of key monetised costs by 'main affected groups'						
The monetised costs are the same as that in Option 1.						
Other key non-monetised costs by 'main affected groups'						
There will be costs to ship-owners/maritime insurance industry, in the event of future increases of liability limits. However, there will be no additional cost from having an ambulatory reference provision, as ship-owners will be required to comply from increases in liability limits from the point of adoption, regardless of when the changes get transposed into UK law.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional	N/A	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0.0		0.0		0.2	
Description and scale of key monetised benefits by 'main affected groups'						
The monetised benefits are the same as that in Option 1.						
Other key non-monetised benefits by 'main affected groups'						
In addition to the benefits identified in Option 1, if there is a future increase in limits of liability, the ambulatory reference provision would help speed up the implementation process and lead to a reduction in government administration costs. Ambulatory referencing will mean that industry will only have to familiarise itself with change to LLMC text instead of referring to national legislation changes.						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5%

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	

Summary: Analysis & Evidence

Policy Option 3

Description: Provides discretionary powers for the issuing of UK Port State Certificates for Bunker Convention purposes.

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	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 Price)	Total Cost (Present Value)
Low	NQ	N/A	NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

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

There are no anticipated costs with this Policy Option.

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

The provision will not introduce any new costs or burdens on industry.

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

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

As certificates are refused on a case by case basis, any monetised benefits are unable to be identified.

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

The Secretary of State will have the power to refuse to issue certificates relating to the Bunkers convention where he is not satisfied that either the vessel or the ship owner meets the minimum criteria. This will reinforce the UK reputation for the promotion of safe vessels, making it harder for sub-standard vessels to operate.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			0.0

Summary: Analysis & Evidence

Policy Option 4

Description: Incorporates Options 1, 2, 3

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.0	High: 0.0	Best Estimate: 0.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	0.0	0.2

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

The only monetised cost is of Policy Option 1, where the estimated cost is £64,732.85 per year (spread across roughly 1000 ships). This is most likely to be borne by ship-owners in terms of increases in insurance premia, though may be partially borne by the insurance industry if rises in insurance premia don't fully reflect the increase in pay-outs. The increase to the limits broadly reflects inflation since 1996, such that real costs would be brought back to the 1996 level.

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

This option will not introduce any new costs or burdens on industry above those outlined for options 1-3.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	0.0	0.2

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

The only monetised benefit is Option 1: The benefits of the increased limits to liability has been estimated at £64,732.85 per year (i.e. equal to the costs). This will be a transfer from ship-owners and the maritime insurance industry, to third parties incurring losses, damaged property or environmental damage as a result of shipping incidents (most likely cargo owners and government). A conservative assumption has been used that none of these benefits fall to businesses.

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

This option will not introduce any new benefits above those outlined for options 1-3.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It has not been possible to quantify the effect of the cost of insurance as it is influenced by multiple factors and operations.

The increase in liability limits agreed by the IMO is based on CPI and the GDP inflation rate.

A full qualitative description of the cost or benefit has been provided.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	
			0.0

Evidence Base

The main purpose of this impact assessment is to set out the potential impact of implementing the increase to the limits of liability that are currently set out in the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC), and the associated costs and benefits to the UK of doing so. The new limits were adopted by the International Maritime Organization (IMO) in April 2012 and entered into force internationally on 8 June 2015.

Definitions: in this Impact Assessment reference to –

- The *LLMC* means the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol. It establishes an internationally recognised framework of liability limitation for vessels of 300 gross tons (gt) or above, and allows ship-owners a right to limit their liability for any claims arising from a wide range of shipping related incidents by setting up a limitation fund from which a Court will pay agreed claims;
- The *IMO* means the International Maritime Organization. This is a specialised agency of the United Nations with 170 Member State and three Associate Members. The IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping covering safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping;
- *SDR* means a Special Drawing Right. This is an international reserve asset created by the International Monetary Fund in 1969 to supplement its member countries' official reserves. As at 7 July 2015, 1 SDR was worth £0.90 (\$1.39);
- The *Bunkers Convention* means the International Convention on Civil Liabilities for Bunker Oil Pollution Damage 2001. This requires insurance or other financial security for all ships over 1000 gross tonnage (gt) entering the UK. It introduces strict liability for pollution or associated preventative measures for all types of ships' fuel and lubricating oil;
- The *Wreck Convention* means the Nairobi International Convention for the Removal of Wrecks 2007. This provides a uniform legal basis to locate, mark and remove, or have removed wrecks which pose a hazard to navigation of the marine environment. It imposes strict liability and compulsory insurance (for ships of 300gt and above) on ship-owners;
- The *Athens Convention* means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002. This Convention establishes a liability and compulsory insurance regime specifically related to the death of, or personal injury to, a passenger, and the loss of, or damage to, their luggage carried by sea on an international journey. Ship-owners are required to have insurance in place that is not less than 250,000 SDR;
- The *HNS Convention* means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, as amended by the 2010 Protocol. This is not in force internationally yet;
- The *EU Insurance Directive* means the Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of ship-owners for maritime claims. It requires all ships over 300gt to maintain insurance. The limits are in line with those already established under the LLMC 1996;

- *Ambulatory referencing* in domestic legislation provides a legislative mechanism that allows changes to international instruments (in this case, to changes in the limits of liabilities for maritime claims), to which the UK is a party, to take effect in UK law without the need to make further legislative or regulatory provision. It was introduced in the Deregulation Act 2015 which received Royal Assent in March 2015;
- *Passenger* means, for the purposes of this impact assessment, any person carried in a ship (a) under a contract of carriage, or (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by either the LLMC '96 or the Athens Convention.
- The *IGP&I Clubs* mean the International Group of Protection and Indemnity Clubs, who provide the majority of maritime insurance cover for third party liabilities, including the Bunkers, Wreck Removal, Athens (non-war related) Conventions, and the EU Insurance Directive, mentioned above. IGP&I Clubs are mutual non-profit making organisations that operate through a claim sharing agreement between themselves (“the Pooling Agreement”). According to the most recent figures from Equasis¹ who provide global maritime statistics, approximately 61% of the world’s ocean-going fleet are insured through the IGP&I Clubs, and this represents approximately 92% of the global tonnage of merchant vessels².

1 Background

1.1 The LLMC

The UK is a State Party to the LLMC which sets specified, maximum, limits of liability for three types of maritime claims against ship-owners – **loss of life or personal injury claims** (for persons other than passengers); **passenger claims**; and **property claims** (such as damage to other ships, property or harbour works). A full list of claims subject to limitation is set out in **Annex A**.

Reservations

Under Article 18 of the 1996 LLMC Protocol, State Parties are permitted to apply the following Reservations:

Article 2 (1) (d) and (e) –

- A State may exclude the right to limit liability in respect of the raising, removal, destruction or rendering harmless of a ship that has sunk, or is wrecked or abandoned, including anything that is, or has been, on board the ship.
- A State may exclude the right to limit liability in respect of the removal, destruction or the rendering harmless of the cargo of the ship.
- A State may exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances By Sea, 1996 (the HNS Convention).

¹ Equasis is an organisation that provides statistical data to the maritime sector in order to promote safety and quality

² The World Merchant Fleet, Equasis Annual Report 2012, chapter 4 - <http://www.equasis.org/>

The HNS Convention will establish a liability and compensation regime for damage caused by dangerous and polluting cargoes carried by ship. The limits of liability will be considerably higher than those under the 1996 LLMC Protocol and it will be much easier for claimants to obtain compensation. The purpose of this Reservation is, therefore, to ensure that claimants can obtain the higher compensation amounts available under the HNS Convention.

The UK has made this Reservation, but it will only apply if and when the HNS Convention (as amended) enters into force. In the meantime, the limits of liability under the LLMC '96 will continue to apply to damage arising from hazardous and noxious cargoes.

The right of limitation under LLMC is available to both ship-owners and salvors. It enables them to limit their total liability for defined claims arising on any distinct occasion to a maximum fixed amount, unless the loss resulted from their personal act or omission, committed with the intent to cause loss, or recklessly and with knowledge that such loss would probably result.

The LLMC sets out a wide definition of parties qualifying as a "ship-owner", including not only the registered owners but also charterers, managers and operators of a sea going ship.

Liability for claims under the LLMC is limited to an aggregate amount calculated by reference to the tonnage of the ship, or to the number of passengers a ship is certified to carry, with the International Monetary Fund's Special Drawing Rights ("SDRs") acting as the international unit of account. Higher limits apply to personal claims as opposed to property claims.

This framework allows ship-owners to limit their liability to a readily insurable amount at a reasonable premium, which can be factored into their overall running costs of the vessel. It also provides for fair levels of compensation, which are intended to encourage prompt settlement.

The alternative to setting a maximum limit is unlimited liability, which would lead to uncontrolled levels of compensation having to be paid out to successful claimants. This would force insurance companies to set premiums on financial risks that are of an unquantifiable and unpredictable nature – and, in turn, potentially expose their businesses to significant risks. The end result would be unacceptably high premiums and/or insurers deciding to withdraw from the market altogether, both of which would act as a disincentive to ship-owners to comply with their international obligations and so distort competition. Such outcomes could lead to increased non-compliance since the market would not favour those attempting to comply and have the potential effect of increased numbers of sub-standard vessels operating in international waters and increase financial risks for governments to clean up after incidents.

A ship-owner's limit of liability under the IMO's Bunkers Convention, Wreck Removal Convention, Athens Convention and – when it is in force internationally – the HNS Convention, are all based on the limits set out in the LLMC, as is the EU Insurance Directive.

The UK has dis-applied these limits for wreck removal purposes.

The limits of liability under the LLMC can be amended using the "tacit" amendment procedure. This procedure provides for a maximum increase on the current limits (adopted back in October 1996) of 6% per year, calculated on a compound basis. To bring an increase into effect takes three years from the time of adoption by the IMO Legal Committee.

1.2 Summary of limits of liability under LLMC

In April 2012 the IMO adopted a 51% increase to the limits of liability set out under the LLMC using the tacit amendment procedure. These new limits, which do not apply to passenger claims (as defined under Article 7(2) of the LLMC), came into force on 8 June 2015.

The new maximum limit of liability for claims for loss of life or personal injury (non passenger) on ships between 300 gross tons (gt) but not exceeding 2,000 gross tons (gt) is 3.02 million SDR (up from 2 million SDR).

For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons – 1,208 SDR (up from 800 SDR)
- For each ton from 30,001 to 70,000 tons – 906 SDR (up from 600 SDR)
- For each ton in excess of 70,000 – 604 SDR (up from 400 SDR)

The new limit of liability for property claims for ships not exceeding 2,000gt is 1.51 million SDR (up from 1 million SDR).

For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons – 604 SDR (up from 400 SDR)
- For each ton from 30,001 to 70,000 tons – 453 SDR (up from 300 SDR)
- For each ton in excess of 70,000 tons – 302 SDR (up from 200 SDR)

2 Problem under consideration

There is a need to ensure that the international framework which allows ship-owners to limit their liability for maritime claims remains effective and provides for the increased cost of having to deal with shipping related incidents, especially those arising from incidents involving bunker fuel spills. Failure by ship-owners to have measures in place to cover their liabilities could have considerable consequences for those affected by such incidents and lead to the Government, local authorities, business (of all sizes) and individuals not being able to recover costs associated with dealing with an incident, or obtain recompense for damages, if the limits are inadequate to cover the costs of claims.

The 51% increase to the LLMC limits of liability adopted by the IMO in 2012 entered into force internationally on 8 June 2015. Being a State Party to the LLMC, the UK is obliged to implement these increases otherwise the UK would be in breach of its international obligations and could lead to significant operational difficulties for ship-owners flying the UK flag.

Of course, if the UK were to decide that it no longer wished to abide by the LLMC or to the changes to the liability limits, the correct procedure would be for the UK to denounce the Convention. However, such a step is not being considered here because it would be detrimental to the UK's wider economic interests, given the international nature of shipping and the UK's reliance in shipping for international trade.

There is always the likelihood that the LLMC 1996 limits may increase on future occasions, triggered not just by changes in monetary values, and it would considerably simplify the whole implementation process if there was a legislative mechanism to ease the process on such future occasions.

A final issue is in relation to the Bunkers Convention and the need to give the Secretary of State discretionary powers when issuing Port State Certificates, in line with the implementation of other similar Conventions. Such discretion will give the Secretary of State the right to refuse to issue certificates to vessels that do not comply and provide legal certainty.

As part of our 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 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 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 from the consultation Stage Impact Assessment will not now be taken forward at this time and so retain the existing arrangements.

3 Rationale for intervention

3.1 LLMC 1996 increases

In the event of a shipping related incident, there is currently nothing to compel ship-owners to pay claims beyond their current limits of liability under the LLMC. The resulting difference could potentially be significant and, as indicated previously, have negative effects on those seeking recompense, or those (such as Government) who would have to meet any shortfall, since it would not be practical or realistic to leave an incident (particularly involving pollution or environmental damage) unresolved and claimants would have nowhere else to turn

The very concept of limitation envisages rare cases where claims would be capped. There have been very few incidents since the Convention came into force where costs have actually exceeded the cap.

However, it is 19 years since the current LLMC limits were set and it was decided by the IMO's Legal Committee to increase them in line with changes in monetary value (inflation) since they were set in 1996. The Convention provides a mechanism for the limits to be increased in consideration of three key factors (which are set out in the next section).

The catalyst for the latest increase in the limits of liability under the LLMC dates back to 2009 when an incident involving the vessel Pacific Adventurer prompted the Australian Government to table a proposal to increase the limits at the IMO. The Pacific Adventurer was a cargo vessel which was caught in a cyclone off Queensland (Australia). Some 31 containers filled with ammonium nitrate were lost overboard, and damage below the water line also resulted in an estimated 270 tonnes of bunker fuel oil being spilt. In total, 60 km of shoreline were affected by this incident. The Australian Government declared a state of emergency and engaged legal

proceedings against the ship-owner. Response operations cost a total of 34 million Australian dollars.

Following negotiations with the Australian Government, the ship-owner offered 25 million Australian dollars in compensation, instead of the 17 million which would otherwise have been required by law within the framework of the LLMC. Although this incident represented one of a very few number of incidents where the existing LLMC limits had been exceeded, it highlighted an apparent disparity between what could be claimed under LLMC and the actual cost of clean up after an incident.

3.2 Use of an ambulatory provision

Raising the international limits of liability for general maritime claims and providing for future increases through ambulatory referencing will help to strengthen the application of the international liability regime by ensuring that any such future increases can be applied in the quickest and most effective way in the UK.

3.3 Amending the Bunkers Convention

Government intervention is necessary to amend UK legislation to incorporate these changes, and to remove an element of legislative gold-plating relating to the issuing of State certificates for Bunker Convention purposes.

4 Factors taken into account when increasing LLMC limits of liability

The LLMC lists three factors which the IMO must take into account when considering a proposal to raise the limits of liability. These are as follows:

- the experience of incidents;
- the effect on the cost of insurance, and
- changes in monetary values.

In light of the proposal from Australia, the IMO considered evidence against all three factors. This evidence can be summarised as follows:

4.1 The experience of incidents

In evidence presented to the IMO, the IGP&I Clubs identified 7 out of a total of 595 (1.2%) reported incidents between January 2000 and August 2009 that had incurred costs for pollution damage arising from bunker fuel spills that exceeded the LLMC liability limits, with 3 further cases identified up to March 2012.

Incident	Date	Location	Estimated Costs	Applicable Limit	Difference
Gold Leader	05/03/08	Japan	\$50-60m	\$1,642,516	\$48-58,357,483
Vicuna	15/11/04	Brazil	\$31,500,000	\$7,378,688	\$24,121,312
Sea Diamond	05/04/07	Greece	\$37,313,239	\$13,921,331	\$23,391,908
Server	12/01/07	Norway	\$35,309,997	\$12,333,351	\$22,976,646
Maersk Holyhead	06/11/05	Venezuela	\$32,500,000	\$11,235,840	\$21,264,160
Don Pedro	11/07/07	Spain	\$16,500,000	\$6,903,107	\$9,596,893
Ku San	15/07/06	Japan	\$2,790,680	\$1,553,610	\$1,237,070

Bohai Challenge	31/01/11	Japan	\$8,574,612	\$5,660,000	\$2,887,612
Full City	31/07/09	Norway	\$46,410,451	\$10,014,067	\$36,396,384
Pacific Adventurer	11/03/09	Australia	AUD 33,889,400	AUD 17,000,000	AUD 16,889,400

There were, however, several incidents where the consequences could have been a lot worse, and this continues to be a cause for concern.

4.2 Conclusion

Based on these three factors, the majority of States (including the UK) concluded that a maximum increase in the original limits of liability of 6% per year as advocated by Australia in its proposal (which, on a compound basis, would equate to an increase in excess of 145%) was not justified. The IMO subsequently adopted an increase that reflects the change in monetary value up to 2010, adjusted to reflect the monetary value up to the year of adoption (2012).

In accordance with the tacit agreement procedure, which provides for a three year period between adoption and entry into force, the revised limits entered into force on 8 June 2015 – some 19 years since the LLMC '96 limits were first adopted.

4.3 Policy objectives

The policy objectives are to:

- (1) Implement the increase to the limits of liability under LLMC to ensure public sector, businesses and individuals receive prompt recompense for (recovery of) costs incurred and adequate compensation;
- (2) Facilitate future increases to these limits without the need for further implementing legislation; and
- (3) Provide discretionary powers for the issuing of UK state certificates for Bunker Convention purposes.

5 Policy Options

5.1 Do Nothing

This option would have the effect of the UK not implementing the increases to the liability limits and would, therefore, maintain the *status quo* set by the existing limits.

Whilst this would not necessarily result in any additional costs to UK ship-owners operating solely within UK waters, it could affect any UK registered ships wishing to visit a port in another State Party that had implemented the increases. In such circumstances the UK vessel would then be subjected to those new limits and, in turn, would have implications for the compulsory insurance requirements under other liability Conventions. By failing to comply with international rules UK ship-owner's could soon find themselves disadvantaged from operating if their vessels are detained or refused entry into the ports of other State Parties.

Furthermore, this option would prevent victims from being able to makes claims for the new, higher limits and therefore be unable to recover the full cost of having to deal with shipping related incidents.

To note, that the LLMC itself does not have requirements to have compulsory insurance, but establishes the legal and financial framework within which other liability Conventions operate.

5.2 Option 1: Implement increase to the LLMC limits of liability adopted by the IMO in 2012 to ensure public sector, businesses and individuals receive prompt recompense for the recovery of costs incurred and also adequate compensation. (Out of Scope of OI30, NQRP – International Convention)

Implementing these increases would help to strengthen the international regime and help to create a level playing field within and across industry. It would also ensure that victims are able to recover such costs from having to deal with shipping-related incidents and that they would have access to the new, higher limits set out in the LLMC 96. The new, higher limits, do not adjust those limits previously set for passenger claims.

The mechanism to do this would be achieved by amending the general limits set out in Schedule 7, Chapter II, Article 6 of the 1995 Merchant Shipping Act, with the Secretary of State using powers under (2C) and (2D) of Section 185 to make secondary legislation to introduce the new limits.

5.3 Option 2: Incorporates Option 1 above and also facilitates future increases to the LLMC limits of liability without the need for further implementing legislation by means of an ambulatory reference. (Out of Scope of OI30, NQRP – International Convention)

In addition to implementing the current proposal to increase the LLMC limits (option 1), this option would facilitate an easier adjustment to LLMC 1996 increases in the future. The current practice of implementing international maritime conventions, and regular changes to them, by means of a mixture of primary legislation and secondary legislation has resulted in a complex regulatory structure that is confusing to industry and the regulator alike. It includes a complex mix of international conventions and protocols, EU regulation and domestic rules, applying to different types of vessel engaged in different types of transport of goods and/or passengers (such as domestic journeys, in land waterways and international journeys). It is also time consuming and resource intensive, leading to delays in implementation – which in turn can result in ships being challenged during inspections in foreign ports leading to delays and inconvenience to UK ships.

A new section 306A of the 1995 Act provides a mechanism that would allow changes to international instruments in the maritime sector, to which the UK is a party, to take effect in UK law without the need to make further legislative or regulatory provision.

The practical effect of this section is that where the power has been applied through secondary legislation the Government would not need to make further secondary legislation or publish any other regulatory document in order to give effect to changes to international obligations and standards; changes to the text of an international instrument would be automatically incorporated into UK law in the circumstances specified in the secondary legislation.³

The secondary legislation introducing this option would mean that future amendments to the LLMC limits of liability would automatically be applied without the need for further legislation or regulatory provision. It should be noted that there are three specific scenarios visualised in the LLMC 1996 that would trigger an increase in the limits, as set out in Section 4 – the experience of incidents; the effect on the cost of insurance and, finally, changes in monetary values (Such as, for example, inflation).

³ These notes refer to the Deregulation Act 2015 (c.20), page 63 of the Explanatory Note, which received Royal Assent on 26 March 2015

Following consultation with experts and stakeholders, it was concluded that Option 2 that introduces an ambulatory reference and incorporates option 1, it is not above the minimum implementation requirements and therefore it is not gold plating. Rather, it constitutes as a “copy-out” and therefore does not add anything extra to the international obligations that the UK is bound to under the LLMC. Furthermore, ambulatory referencing will reduce the number of statutory instruments and legislation which would be required in the future. The amount of new and complex regulatory structure could be confusing to industry and regulators. It is not expected that this provision in itself will impose additional cost on business.

5.4 Option 3: Provides discretionary powers for the issuing of UK state certificates for Bunker Convention purposes. (In Scope of OI30, QRP – Reduction in Gold Plating)

The Merchant Shipping (Oil Pollution) (Bunkers Convention) Regulations 2006⁴ amend Chapter 3 of Part 6 of the Merchant Shipping Act 1995 (Liability for Oil Pollution – The Bunkers Convention).

Article 18 (3) of those regulations amends Section 164 dealing with the issue of certificates by the Secretary of State, where certificates are issued by the Port State Control (in the UK this is the Marine and Coastguard Agency, MCA) verifying that the ship-owner has in place insurance cover to meet his/her liability obligations under the Bunkers Convention.

However, the amending SI contains the word “shall” with respect to any request for a certificate by a non-State party to the Secretary of State for Transport, instead of the discretionary effect of “may”, which is provided for in both the original IMO 2001 Convention (under Article 7 (2)) and the EU Council Decision⁵ that authorised EU Member States to sign, ratify or accede to the Convention. Applying this option and correcting the legislative language will reflect the original intention of those measures.

In the current situation this has had the effect of legally requiring the Secretary of State to issue certificates to a registered ship-owner if they demonstrate that they are able to meet their liability obligations and that the underlying insurance (or other financial security) is sufficient to cover those liabilities. This removes any discretion that the Secretary of State may wish to apply in cases where the ship-owner or the vessel itself fails to respect its other obligations under other conventions or protocols. In particular, this could lead to situations where the Secretary of State is required to issue certificates to vessels flagged by non-ratifying States that are on the Paris MoU Port State Control Black and Grey lists⁶.

Whilst the UK’s policy has been that certificates will not be provided for those vessels whose Flag State is on the Paris MOU Black List, this position conflicts with existing legislation and, therefore, creates a risk of challenge for the UK. In other words, if a ship-owner was to insist on receiving a certificate from the United Kingdom and all the relevant and necessary documentation was in all respects complete and compliant – irrespective of the condition of the vessel or the status of the ship-owner – the Secretary of State would nonetheless be required to issue a certificate or risk having his decision not to issue a certificate overturned at judicial review, which has the potential to expose the UK to claims for compensation.

This has been an ongoing risk (ever since the amending regulations were made in 2006), but one that can be rapidly resolved by making a minor modification to that legislation, replacing the

⁴ SI 2006 No. 1244

⁵ Council Decision 2002/762/EC

⁶ The Paris MoU is an organisation that consists of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. Its mission is to eliminate the operation of sub-standard ships through a harmonized system of port State control. Its basic principle is that the prime responsibility for compliance with the requirements laid down in the international maritime conventions lies with the ship-owner/operator. Responsibility for ensuring such compliance remains with the flag State.

word “shall” with “may”, and so bringing it fully in line with the original intention of the Convention that gives a State Party to discretion to issue certificates to non-UK flagged ships. By ensuring the Secretary of State’s discretionary power in this respect would also bring it in line with other such discretionary powers currently applied across obligations to issue certificates under Port State Control.

5.5 Option 4 – Applying all of the above options in one legislative measure

Option 1 will ensure that ship-owners are properly insured to the new higher limits; incorporating Option 2 would ease the passage of future increases to the LLMC 1996; Option 3 is a minor adjustment to existing legislation, ensuring that the Secretary of State has at his or her disposal discretionary powers to issue State certificates or not. Therefore our preferred option is to implement all 3 (Option 4).

5.6 Penalties

In connection with the 3 options set out above, it should be noted that the UK already has in place a well-established, comprehensive and coherent framework of maritime regulatory enforcement which is well understood within the maritime community. No further modification or introduction of new provisions will be necessary in either the enforcement measures or the framework of penalties as a result of the changes to the limits of liabilities agreed by the 99th IMO Legal Committee, since the fundamental requirement for ship-owners to have appropriate levels of insurance in place (as well as certification) are already in place. It will, nonetheless, be the responsibility of ship-owners to ensure that their insurance is adequate and appropriate and reflects the new limits after 8 June 2015.

6 Costs and Benefits

6.1 Introduction

Despite repeated efforts to obtain further information about the potential costs to ship-owners on their insurance premiums or other costs arising from changes, such as those referred to in this IA, industry experts have not been able to provide any evidence. Anecdotally, during the Red Ensign Conference in Bermuda in June 2015, representatives of the maritime insurance industry confirmed that there are a range of factors that are taken into account when calculating increased premiums. Whilst being market-based, insurance is also calculated on the resilience of the market, the number of previous incidents, and the nature of those incidents, which directly impact on the cost of insurance, the activities and journeys of the vessels and so on. Insurers are not necessarily influenced by conventions, or changes to conventions.

Therefore, we have used an alternative approach to provide an indicative estimate of the potential costs of the increased liability limits on industry.

More generally, the Government received 7 responses to the consultation, which included contributions from the UK Chamber of Shipping and the IGP&I (who insure approximately 61% of the world’s ocean-going fleet) as well as maritime legal firms all of whom responded positively to the amendments being proposed by the Government and saw no reason not to proceed with them.

6.2 Option 1 (implementing the new liability limits to 1996 LLMC)

Costs

The increase in liability limits from the levels set in 1996 can be expected to affect maritime insurers and ship-owners. For any maritime incident where the third-party loss is greater than the 1996 limit, there will be a greater cost to maritime insurers in terms of larger payouts. As

most maritime insurance takes the form of mutual insurance, we can expect this cost to be transferred on a one-for-one basis to ship-owners (in terms of higher insurance premia). Where ship-owners do not take out mutual insurance, the insurance industry may bear some of the costs (if the level of increased risk is underestimated).

However, we have been unable to gather any evidence from consultation with stakeholders on the scale of the increase in costs. The IGP&I Clubs that provide most maritime insurance have confirmed on more than one occasion that commercial sensitivities – as well as other factors – means that it is simply not possible to quantify the effect on the cost of insurance on ship-owners simply from an increase in the limits, since insurance rates are influenced by severable variables, e.g. severity and frequency of claims in any one year, types of claims, cost, capacity and resilience of market re-insurance. As a result, we have used evidence from previous incidents to provide an indicative estimate on the potential costs to ship-owners.

The cost on UK industry can be estimated as follows:

As stated previously, in evidence presented to the IMO, the IGP&I Clubs identified 7 out of a total of 595 (1.2%) reported incidents between January 2000 and August 2009 that had incurred costs for pollution damage arising from bunker fuel spills that exceeded the LLMC liability limits, with 3 further cases identified up to March 2012.

Incident	Date	Location	Estimated Costs	Applicable Limit	Difference
Gold Leader	05/03/08	Japan	\$50-60m	\$1,642,516	\$48-58,357,483
Vicuna	15/11/04	Brazil	\$31,500,000	\$7,378,688	\$24,121,312
Sea Diamond	05/04/07	Greece	\$37,313,239	\$13,921,331	\$23,391,908
Server	12/01/07	Norway	\$35,309,997	\$12,333,351	\$22,976,646
Maersk Holyhead	06/11/05	Venezuela	\$32,500,000	\$11,235,840	\$21,264,160
Don Pedro	11/07/07	Spain	\$16,500,000	\$6,903,107	\$9,596,893
Ku San	15/07/06	Japan	\$2,790,680	\$1,553,610	\$1,237,070
Bohai Challenge	31/01/11	Japan	\$8,574,612	\$5,660,000	\$2,887,612
Full City	31/07/09	Norway	\$46,410,451	\$10,014,067	\$36,396,384
Pacific Adventurer	11/03/09	Australia	AUD 33,889,400	AUD 17,000,000	AUD 16,889,400

None of these incidents occurred in the UK or on UK-registered ships.

However, we have taken all of the incidents that were subject to the LLMC limits, converted them to £ pound using the 2015 average annual exchange rates and inflated the values using GDP deflators. This provides an indicative estimate of the cost of the new limits globally (had they been in place).

Using \$1(USD) = £0.65 (average across 2015) and \$1(AUS) = £0.49 (average across 2015)⁷. The following are considered to be the applicable limit in £:

	Applicable Limit ¹	Applicable Limit in £
Gold Leader	1,642,516.00 USD	1,067,635.40
Vicuna	7,378,688.00 USD	4,796,147.20
Sea Diamond	13,921,331.00 USD	9,048,865.15

⁷Source: Bank of England

Server	12,333,351.00 USD	8,016,678.15
Maersk Holyhead	11,235,840.00 USD	7,303,296.00
Don Pedro	6,903,107.00 USD	4,487,019.55
Ku San	1,553,610.00 USD	1,009,846.50
Bohai Challenge	5,660,000.00 USD	3,679,000.00
Full City	10,014,067.00 USD	6,509,143.55
Pacific Adventurer	17,000,000.00 AUS	8,330,000.00
Total		54,247,631.50

¹The applicable limit over this time period was the original 1996 limit

Using the Government GDP Budget 2016 Deflators, the 1996 total was adjusted for inflation:

Total 1996 Limit	£54,247,632
Total 2012 inflated price (i.e. implied new limit)	£78,218,855
Increase in limits	£23,971,224

We have made the assumption that the level of risk of an incident in the UK or involving UK registered ships, is similar to the level of risk worldwide. This is a conservative assumption given that the UK is considered a high-quality flag, and no previous incidents in the past decade have involved UK-registered ships. As the UK is estimated to be 0.80% of the world fleet (DfT analysis of IHS Global data) the total cost between January 2000 and August 2009 could be expected to be 0.8% of £78,218,855, at £625,751. The total cost of the increase in liability limits will be 0.8% of £23,971,223.59, at £191,770.

The annual estimated cost to the UK industry of policy option one is therefore £19,838. As of December 2015, there were approximately 1,000 ships of tonnage 300GT or greater on the UK Ship Register. This would imply an average increase in annual premia of £20 per ship.

It ought to be noted that in practice, the introduction of the increased liability limits into UK legislation will have little practicable impact on UK-registered ships as they will already be required to comply in order to trade internationally.

Benefits

The increases in liability limits are for payouts in relation to loss from loss, or property or environmental damage as a result of a maritime incident. Any increase in the limit will therefore be a transfer from insurance providers to these third-parties, which are most likely to be governments or cargo owners. The size of the benefit will therefore be equal to the cost at £19,838.

It is not possible to tell whether the cargo owners are businesses or not. Therefore we have used a conservative assumption and assumed that none of the increased pay-outs will be transferred to business.

This means that the NPV of policy option 1 is £0, whilst there is still an estimated annual net cost to business at £0.1m.

6.3 Option 2 (introducing a provision for an ambulatory reference)

Option 2 has the same costs and benefits as Option 1. In addition, Policy option 2 has:

Costs

This option of providing for an ambulatory reference would impose no direct cost on business or place additional cost on any individual or organisation. Nonetheless, because ambulatory referencing would enable future increases to be applied automatically without the need for further legislation or regulatory provision, there could be a direct cost to business if at some point in the future a decision is made within the framework of the IMO to increase the limits of liability again— e.g. because they are no longer keeping pace with changes in monetary value or no longer reflect the reality of the costs associated with the clean-up of an increasing number of incidents.

It is not possible to predict when future increases may occur. But given that Option 1 seeks to implement the first increase for 19 years and the increase equates to higher insurance premia of approximately £20 per ship, it would be reasonable to assume that these are not likely to be regular occurrences or large increases. Annual adjustments to the liability limits of the scale seen in Option 1, would imply increases in insurance premia of approximately £1 per ship per annum.

Benefits

Until there is a future increase in the limits of liability under the LLMC, the ambulatory reference provision would result in no direct benefits to any business, individual or organisation.

However, when such increases do occur, the ambulatory reference provision would help to speed up the implementation process. This in turn would affect the timing of when any costs and benefits are actually incurred by businesses, individuals or organisations, and would also lead to a reduction in the administrative resources currently required by Government for implementation purposes.

Utilising this power would also mean that, when a change is made to the limits of liability, industry only has to familiarise itself with the change to the LLMC text rather than also having to refer to national legislation implementing (and sometimes interpreting) the change to the LLMC.

Prompt implementation also has the potential benefit of reducing the likelihood of delays and inconvenience in foreign ports for UK flagged ships trading internationally, and international criticism associated with late implementation. Removing the delay would reduce the legal uncertainty that occurs between international adoption and UK transposition, when it is unclear what liability limits apply. This is because UK registered shipowners will be expected to purchase insurance with the internationally agreed liability limits regardless of UK domestic law, in order to trade internationally.

6.4 Option 3 Amend the Bunkers Convention Regulation to give Secretary of State discretionary powers over the issuance of Port State Certificates.

Costs

There will be no impact for UK flagged vessels since they are already expected to comply with the standards set through the Conventions to which the UK is a party to. This provision will not introduce any new costs or burdens to UK industry, nor prevent non-UK flagged vessels that are compliant with international standards from entering UK ports.

Benefits

The main practical benefit will be to remove the obligation on the Secretary of State to issue certificates relating to the Bunkers Convention in cases where he is not satisfied that either the vessel or the ship-owner meets the minimum criteria. It will, of course, reinforce the UK's reputation in promoting safer vessels through proper compliance and standards, making it more difficult for sub-standard vessels to operate.

6.5 Option 4 (Incorporate all of the previous options into one preferred option)

Costs

This will incorporate the costs from options 1, 2 & 3. The costs are explained separately in the above sections.

Benefits.

This will incorporate the benefits from options 1, 2 & 3. The benefits are explained separately in the above sections.

6.6 Other Costs

Familiarisation costs: There should be negligible – if any – familiarisation costs for ship-owners under any of the policy options since ship-owners ought already to have in place the necessary insurance certification required within both the framework of LLMC and for meeting any specific requirements set out in the appropriate Convention. No additional work would be required.

Administrative cost: There are, as a consequence of the proposed provisions in this IA, no new or revised administrative costs to ship-owners.

7 Key assumptions/sensitivities/risks

There are several assumptions used in the analysis used to estimate the impact of the increased liability limits on industry (in the form of increased insurance premia). The first is that the frequency and scale of incidents in the past decade are a good predictor of the frequency and scale of incidents over the next decade. Secondly, we have assumed that the level of risk of incidents involving UK registered ships will be similar to the level of risk globally. Consequently, we have assumed that 0.8% (the UK-registered share of ships globally) of the global costs of the increased liability limits, will fall on UK-registered ships.

8 Wider Impacts

8.1 Small and Micro Business Assessment

It is not considered that the introduction of the new LLMC limits will have any significant impact on small businesses. The increases are applied to an international Convention already in force and the liability conditions are applied according to the gross tonnage of vessels.

The businesses that would be affected by the increases are ship-owners and insurers. So whilst it is accepted that some UK ship-owners may be small businesses, particularly those that operate as one-ship companies, the IGP&I Clubs (who insure approximately 92% of the world's ocean-going tonnage) and the UK Chamber of Shipping have stated that the majority of the UK fleet maintains compulsory insurance (where required by one of the other international Conventions in force or by the EU Insurance Directive). Due to lack of available data, it has not been possible to quantify the number of small and micro businesses which could be affected by the above options.

All vessels over 300 gt require an annual State Certificate as proof that insurance or other financial security is in place within the framework of the LLMC and this will continue. For UK flagged vessels, such certificates are issued by the MCA. The cost for such certificates is currently £31 and is not seen as placing a significant burden on small firms who are currently required to have certificates already, nor will it put them at any significant disadvantage to ship-owners of vessels under 300 gt who are not required to have a certificate.

Micro Businesses

Small and micro businesses are not necessarily exempt from the proposed options. They would come into scope of LLMC '96 and, therefore, the increased liability limits if: (a) the vessel or vessels that they operate are over 300 gross tons and; (b) the vessels are engaged in international journeys. However, such vessels in the 300 - 500 gross ton range would not normally be owned by micro businesses, since it is a costly investment (anything between £5million - £10 million) and ship ownership is very often shared between different parties, depending on the size of the vessel, the cargoes they carry, the areas and risks in which they operate, the financing of the vessel, and so on. Whereas, the complement of crew may well be employed through an agency, rather than being employed directly by the ship-owner.

As a result of these important factors there is no available evidence to support the idea that any micro businesses in the UK do operate and crew such vessels

8.2 Competition Assessment

None of the options proposed would place any additional burdens on any new or existing firms, and would have no impact on competition within the maritime sector.

8.3 Environmental & Carbon Impact

None of the options would have any adverse environmental or carbon impact.

8.4 Race, Disability and Gender Impact Assessment

All options have been assessed for relevance but the measures proposed are not going to have any variation in impact on different groups; an Equalities Impact assessment is therefore not required.

8.5 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."

8.6 Family Test

It is considered that there are no significant impacts on families

9 Summary and preferred option

The preferred option is Option 4 as this will not only deliver the minimum objective, which is to ensure that the new LLMC limits can be applied, thereby providing the financial framework through which victims of incidents can seek prompt and appropriate compensation, but also to recoup their costs in connection with any clean up as a result of such incidents. It incorporates the ambulatory reference enabling future LLMC 1996 increases to be applied more easily and contribute towards providing legal certainty.

Option 4 enables an amendment to the Bunkers Convention legislation and gives the Secretary of State discretion when issuing certificates. It would be disproportionate to go through the impact assessment process on such a minor point, which introduces no cost or admin burden on industry, and it is appropriate to include this measure in the package.

10 The Business Impact Target (BIT) and One-In, Three-Out (OI3O)

The preferred option (option 4) contains no elements of gold plating Giving the Secretary of State discretionary powers over the issuance of Port State Certificates: This removes an

element of existing gold plating, as currently the Secretary of State has to issue these certificates if the vessel has all the required documentation, even if the UK does not want to issue the certificate. The current requirement in international conventions is that a Secretary of State may issue a certificate (and by extension may not). Moving to this less restrictive requirement is what is being proposed in this impact assessment. This component of the preferred option is a Qualifying Regulatory Provision (QRP) and in scope of OI3O. However, the costs and benefits are minimal and it has not been possible to quantify them. The other components (Option 1 and 2) are Non-Qualifying Regulatory Provisions (NQRPs) and out-of-scope of OI3O. Overall the preferred option is cost neutral.

11 PIR (Post Implementation Review) Plan

A PIR will not be carried out for this policy. Policy Option 1 is a simple amendment of primary legislation, changing limits of liability to a level agreed internationally, Policy Option 2 is ambulatory referencing so that future increases agreed at the international level are adopted automatically into UK law and Policy Option 3 is a very small deregulatory change, which reduces Gold Plating. Therefore it is considered disproportionate to complete a PIR for Policy Option 4 (1, 2 & 3 combined).

Annex A

General Limits of Liability (i.e. for those incidents other than loss of life and injury to passengers, or loss or damage to passenger luggage)

The LLMC '96 establishes a framework and sets limits for the vast majority of third party claims that can be made against a ship-owner. The scope of the general limits are set out under Article 2 (1) of the LLMC '96. These are:

- (a) Claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) Claims in respect of other losses resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;
- (d) Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is, or has been, on board such ships;
- (e) Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) Claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

Furthermore, the following claims are exempted from limitation under LLMC, and are, therefore, not affected by the latest increases:

- (a) Claims for salvage, including, if applicable, any claim form or special compensation under Article 14 of the International Convention on Salvage 1989 as amended, or contributed in General Average;
- (b) Claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) Claims subject to any international convention or national legislation governing or prohibiting the limitation of liability for nuclear damage;
- (d) Claims against the ship-owner of a nuclear ship for nuclear damage;
- (e) Claims by servants of the ship-owner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the ship-owner or salvor and such servants the ship-owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than provided for in Article 6.

Annex B

UK Fleet Statistics (2014)

Vessel Type (Commercial Vessels)	Number of Vessels	Total GT
International	Number of	Total GT
NLS Tanker	0	0
Combination carrier	27	458908
Oil tanker	12	424811
Gas carrier	4	268806
Chemical tanker	28	373893
Bulk carrier	18	786385
Containership	92	6514185
Ro-Ro cargo ship	31	897326
General cargo / multipurpose ship	100	299416
Refrigerated cargo carrier	0	0
Ro-Ro passenger vessel	76	881415
Passenger ship	95	632766
Factory ship	0	0
Heavy load carrier	0	0
Offshore service vessel	148	283309
Mobile offshore drilling unit	6	261084
Special purpose ship	46	493224
High speed cargo craft	0	0
Tug	175	64646
Livestock	0	0
Dredger	33	79384
Vessels in use for sport and pleasure	0	0
Fishing Vessels	5718	184084
Other types of ship	353	262048
Total:	6962	13165689