

Increases to the limits of liabilities under the IMO Convention on Limitation of Liability for Maritime Claims

Department for Transport

RPC rating: The IA is now fit for purpose as a result of the Department's response to RPC's initial review notice

Description of proposal

The Department proposes to increase the limits of liability for ship-owners in line with changes to the Convention on Limitation of Liability for Maritime Claims (LLMC). These limits have remained unchanged since 1996. The International Maritime Organization (IMO) adopted changes to increase the limits in line with inflation in 2012; this change came into force in June 2015.

In addition, the Department proposes to implement changes that the Department describes as gold-plating, because they are not required by changes to international agreements. First, the Department intends to make use of ambulatory referencing, so that any future changes to limits in line with the LLMC can be implemented without the need for further legislation. Second, the Department wants to ensure that the compensation limits under the 1974 Athens Convention take precedence over the LLMC limits. This will allow for more generous passenger claims.

Finally, the Department proposes to address a small legal uncertainty introduced during the implementation of a previous convention. This resulted in the actions of Secretary of State for Transport being more constrained than intended by the convention. The Department, therefore, proposes to provide more discretionary powers to the Secretary of State for the issuing of UK state certificates for Bunker Convention purposes which introduced strict liability for pollution or associated preventative measures for all types of ships' fuel and lubricants. This will ensure that the Secretary of State can deny such certificates to non-UK vessels that do not satisfy basic international standards.

Impacts of proposal

Businesses that would be affected by the increases in liability limits are mainly ship-owners and insurers. The IA provides analysis of the impacts for all elements of the proposal.

Costs

Implementing the increased liability limits. The IA explains that increases in liability limits would usually, in other insurance markets, lead to an increase in insurance costs. However, the Department argues that it does not expect this to be the case here. It bases this on past experience dealing with insurance in the shipping industry and on limited industry feedback

showing that there is no automatic link between liability limits and insurance premia in this market.

Introducing a provision for an ambulatory reference. Future changes to the limits should be accounted for in this proposal, because it enables them to be implemented automatically (without further legislation). However, as explained above, the Department does not expect there to be a significant cost to business from changes in liability limits. In any case, it considers it unlikely that any such changes would be frequent given that this has been the first adjustment in 19 years.

Increase compensation limits for passenger claims to the Athens Convention. The IA says that for vessels already engaged on international passenger journeys there ought not to be any cost to ship-owners because they are already required to carry insurance that respects the provisions of the Athens Convention. For all other ship-owners, the Department maintains that it has no evidence suggesting that insurance costs and liability limits are linked in this specific insurance market.

Bunker Convention and the Issuance of Port States Certificates. The Department claims that there will be no impact for UK flagged vessels since they are already expected to comply with the standards set through the Convention. This provision will not introduce any new costs or burdens on industry, although, in principle, non-UK vessels could now be denied such certificates.

Benefits

Implementing the increases to the liability limits as set out in the LLMC will ensure that UK ship owners continue to meet their obligations and that the public sector, affected businesses and individuals receive adequate compensation. Increased compensation limits under the Athens Convention should mainly benefit passengers who will be entitled to higher levels of compensation in the future. Introducing ambulatory referencing will speed up the implementation process for any future changes, although these are expected to be limited.

Going beyond minimum implementation

The Department classifies the use of ambulatory referencing and the precedence of liability limits under the Athens Convention for passenger claims as gold-plating, because they go beyond the minimum requirements of implementing the international agreements involved. This appears reasonable. The Department further assesses these elements as 'zero net cost', because it sees no direct link between the level of liability limits and insurance costs in this market. This is discussed further below.

Small and micro-business assessment

Although this is an implementation of an international convention, the Department has included an assessment of the impacts on small and micro businesses. The Committee welcomes this approach as good practice, especially as the proposal includes elements going beyond minimum requirements,

The SaMBA explains that it is possible that some small ship-owners or insurers could be affected by the proposal but it is unlikely to affect any micro businesses due to the minimum

size of ships affected. The IA explains that, due to data limitations, it not possible to estimate robustly the number of small and micro businesses affected. The Department aims to use consultation to gather more information on this and has included a specific question to consultees who operate a small or micro business.

Quality of submission

The Department has identified the main impacts on business expected and has provided a qualitative analysis of the proposals.

The RPC, in its initial review notice, had asked the Department to clarify that any increased costs to business from increasing the liability limits would only restore their real value to the 1996 level, but compared to the counterfactual of liability limits remaining at their current level it would mean an increase in costs.

An increase in liability limits would normally result in an increased cost to business. In response to the initial review notice, the Department has now included a section on this issue in the IA. This explains that this should indeed be the case in normal insurance markets. However, the Department explains that past experience and feedback by businesses indicate that costs are unlikely to increase.

The Department will need to test this through consultation and provide evidence at final stage why insurance costs will not increase. If there is a cost associated with increased liability limits, then there would be an increase in the out of scope cost and in the elements going beyond minimum requirements, mainly the move to the higher compensation limits under the Athens Convention for passenger claims. The latter would then be classified as an 'IN'.

Initial departmental assessment¹

Classification	Out of Scope (international) / In scope gold-plating elements
Equivalent annual net cost to business (EANCB)	Not quantified
Business net present value	Not quantified
Societal net present value	Not quantified

RPC assessment

Classification	Out of Scope (international) / In scope gold-plating elements
Small and micro business assessment	Not required (international)

Opinion: consultation
Origin: international
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Michael Gibbons CBE, Chairman