



## **Consultation**

### **Merchant Shipping Act 1995 (Amendment) Order 2017**

The purpose of this paper is to consult on proposed amendments to the Merchant Shipping Act 1995 (an Act of Parliament) as it is applied to the Island.

The main amendments are to the sections of the Merchant Shipping Act 1995 which implement the Convention on Limitation of Maritime Claims 1976 as amended by the 1996 Protocol (LLMC).

There are two main proposals –

- implement the new higher limits of liability under LLMC which came into effect internationally on 8 June 2015; and
- exclude ship-owners right to limit liability under LLMC for wreck removal.

In addition, the Department is taking the opportunity to make other minor amendments to the Merchant Shipping Act 1995 as detailed below.

This paper contains 4 sections-

Section 1 – Convention on Limitation of Liability for Maritime Claims 1976 as amended by the 1996 Protocol (LLMC)

- Higher limits of liability
- Exclusion of wreck removal limitation
- Limitation of liability in respect of passengers
- Drafting correction

Section 2 – Issue of Bunkers Certificates to non-Manx Ships

Section 3 – References to calculation of tonnage in the Act

Section 4 – Merchant Shipping Act 1995 marked with proposed amendments

If you would like to make any comments on the proposed changes please send them (preferably by email) to [angela.barnett@gov.im](mailto:angela.barnett@gov.im) by close of play Tuesday 22 August 2017.

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Consultation Closing Date: 22 August 2017**

## **Section 1 - Convention on Limitation of Liability for Maritime Claims 1976 as amended by the 1996 Protocol (LLMC)**

The Convention on Limitation of Liability for Maritime Claims allows ship-owners and salvors to limit their liability to pay compensation for two types of claims - claims for loss of life or personal injury, and property claims such as damage to other ships, property or harbour works.

Ship-owners and salvors may limit their liability, except if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result.

In the event of an incident a ship-owner may apply to a court of a relevant jurisdiction to limit liability in accordance with LLMC. The relevant jurisdiction for LLMC is not always clear cut but the location of the incident or the ship-owners residence or principal place of business are factors which may be taken into consideration.

### **Higher limits of liability**

The Department proposes to amend the Merchant Shipping Act 1995 ("the Act") to implement the new higher limits of liability under LLMC which came into effect internationally on 8 June 2015.

Liability for claims under LLMC are calculated by the tonnage of the ship, or 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.

The limits of liability as amended will also affect the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, and the Nairobi International Convention on the Removal of Wrecks 2007. The terms of those two Conventions provide that the maximum limits the insurer/guarantor shall pay under the respective "blue cards" shall not exceed an amount calculated in accordance with the LLMC. Therefore the higher limits of liability will automatically be incorporated into those two Conventions.

The higher limits of liability are as follows –

The maximum limit of liability for claims for **loss of life or personal injury** on ships between 300gt but not exceeding 2,000gt 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)

## **Exclusion of wreck removal limitation**

Under Article 18 of the 1996 LLMC Protocol, State Parties are permitted to apply Reservations to exclude the right to limit liability in respect of the raising, removal, destruction or rendering harmless of a ship that has sunk, wrecked, stranded or abandoned, including anything that is, or has been, on board the ship. (Article 2(1)(d))

The IOM has (through the UK) made this reservation, however the exclusion of the limitation for wreck removal has not been carried through into national legislation. The Department now intends to amend the Act to implement the reservation on wreck removal which means that ship-owners will no longer be able to limit liability for wreck removal in the Island.

This will bring the Island into line with the position of the UK which specifically excludes ship-owners right to limit liability for wreck removal from the LLMC.

The main reason for this amendment is to protect the Island from potentially having to bear the costs of removing a wreck in Manx territorial waters in the event that the limits of liability under LLMC are exceeded.

Please note the coming into force of the Nairobi International Convention on the Removal of Wrecks (Nairobi Wreck Convention) does not affect a State's right to exclude a ship-owners right to limit liability for wreck removal under LLMC.

The Nairobi Wreck Convention specifies that nothing in the Convention prevents a ship-owner from limiting liability in accordance with the LLMC. However, where the right to limit liability is excluded under LLMC, the Nairobi Wreck Convention does not create a separate right for ship-owners to limit liability. The exception is for insurance providers who may limit liability even if the ship-owner is not entitled limit liability. In these instances a ship-owner may still be liable to pay any additional costs not covered by the insurer where the cost of removing a wreck exceeds the limits of liability under LLMC.

## **Limitation of liability in respect of passengers**

The Department proposes to revoke paragraph 2A of Schedule 7, Part II (Provisions having effect in connection with the LLMC) to clarify the position in relation to the limitation of liability for passengers under LLMC.

Schedule 7, Part II, paragraph 2A of the 1995 Act provides –

### *Claims subject to limitation*

*2A. Paragraph 1(a) of article 2 shall have effect as if the reference to "loss of life or personal injury" did not include a reference to loss of life or personal injury to passengers of seagoing ships.*

The purpose of this wording was to remove the ship-owner's right to limit liability under LLMC in respect of passengers travelling by sea. Instead this would be governed under the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

The intention was for this restriction to only apply to ships actually carrying passengers but the wording in paragraph 2A may be read to also apply to ships not carrying passengers. This has the unintended consequence that a ship-owner of a non-passenger ship might not be able to limit liability in respect of passengers under the Athens Convention or the LLMC.

Difficulties could arise in the event of a collision between a passenger ship and a non-passenger ship. Passengers could claim against the owner of the non-passenger ship who would have unlimited liability rather than claim against the owner of the passenger ship who is able to limit liability under the Athens Convention.

This was not the intention of LLMC and so the Department proposes to revoke paragraph 2A of Schedule 7, Part II. Owners of seagoing passenger vessels must still limit their liability under the Athens Convention rather than LLMC but owners of other vessels are now able to limit their liability under LLMC.

### **Drafting correction**

Schedule 7 of the Act sets out the text of LLMC as it has effect in the Island. In Article 18(1)(a) (as it is reproduced in the Act) there is a drafting error which will be corrected as follows - "article 2, paragraphs 1 (d) and (c)" will be amended to "article 2, paragraphs 1(d) and (e)".

### **Section 2 – Issue of Bunkers Certificates to Non-Manx ships**

Section 164 of the Act specifies that the Department "shall" upon application, issue Bunkers Certificates to a ship registered in any country which is not a Bunkers Convention country, if it is satisfied that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention.

The inference of Section 164 is that the Department "must" issue a Bunkers Certificate in the circumstances described above. In order to make it clear that the issue of Bunkers Convention Certificates to non-Manx ships is at the discretion of the Department, the wording in section 164 will be amended to "may", issue a Bunkers Certificate.

### **Section 3 - References to Calculation of Tonnage in the Act**

There are 3 references in the 1995 Act which specify how a ship's tonnage will be calculated for different purposes. These are:

Section 157(4) and (5) - Liability for oil pollution from tankers

Section 163A (1) and (11) – Bunkers Convention

Schedule 7 Part II 5(2) and (3) - LLMC

It is clear that in all of these cases the intention is for a ship's tonnage to be calculated in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.

However, the references to the calculation of tonnage in the Act are not uniform and in one case refer to calculating tonnage in accordance with an Order that is out of date.

The Act will be amended so that references to calculating tonnage will specify that tonnage will be calculated in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.

### **Revocation of Tonnage Order**

LLMC was previously implemented in the Island by the Merchant Shipping Act 1979 and specified that for the purposes of LLMC a ships tonnage will be calculated in accordance with an Order made by the Department. The Liability of Shipowners and Others (Calculation of Tonnage) Order 1986 GC336/86 was made for this purpose but became obsolete once the Merchant Shipping Act 1979 was replaced by the Merchant Shipping Act 1995.

GC336/86 will now be revoked and the corresponding reference in the 1995 Act for calculating a ships tonnage under LLMC will be replaced with a direct reference to the Convention on Tonnage Measurement of Ships 1969 as explained above.

## Section 4 – Merchant Shipping Act 1995 marked with proposed amendments

This section sets out extracts from the Merchant Shipping Act 1995 marked with the proposed amendments detailed in sections 1 to 3 of this paper. Due to the length of the Merchant Shipping Act 1995 the full text of the Act is not included in this paper but is available upon request.

### Convention on Limitation of Liability for Maritime Claims 1976 as amended by the 1996 Protocol (LLMC)

(Amendments specified in section 1 of this Paper)

#### Higher Limits of Liability

The existing text of Schedule 7, Article 6 of the Act will be amended as follows -

#### “CHAPTER II. LIMITS OF LIABILITY

##### ARTICLE 6

##### *The general limits*

1. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) ~~2 million~~ 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, ~~800~~ 1,208 Units of Account;

for each ton from 30,001 to 70,000 tons, ~~600~~ 906 Units of Account,

and for each ton in excess of 70,000 tons, ~~400~~ 604 Units of Account,

(b) in respect of any other claims,

(i) ~~1 million~~ 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, ~~400~~ 604 Units of Account;

for each ton from 30,001 to 70,000 tons, ~~300~~ 453 Units of Account;

and for each ton in excess of 70,000 tons, ~~200~~ 302 Units of Account.”

## Exclusion of wreck removal limitation and Limitation of Liability in respect of passengers

In Schedule 7, Part II - Provisions having effect in Connection with Convention,

- Paragraph 2(A) is omitted to clarify the position of limitation of liability in respect of passengers; and
- A new paragraph 3 is inserted to exclude the wreck removal limitation as follows –

### “SCHEDULE 7 - PART II

#### PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

##### *Interpretation*

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

##### *Right to limit liability*

2. Subject to paragraph 6 below, the right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of “shipowner” in paragraph 2 of article 1 shall be construed accordingly.

##### *Claims subject to limitation*

~~2A. Paragraph 1(a) of article 2 shall have effect as if the reference to “loss of life or personal injury” did not include a reference to loss of life or personal injury to passengers of seagoing ships.~~

~~3. Paragraph 1(d) of article 2 shall not apply.”~~

### Drafting Correction

The existing text of Schedule 7, Article 18 of the Act will be amended as follows -

### “ARTICLE 18

#### *Reservations*

1. Any State may at the time of signature ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of article 2, paragraphs 1 (d) and ~~(e)~~ (e);
- (b) to 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 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.”



**Issue of Bunkers Certificates to Non-Manx ships**  
(Amendments specified in section 2 of this Paper)

Section 164(1A) will be amended and a new section 1642A inserted as follows –

**“Issue of certificate by the Department of Economic Development**

164.- (1) Subject to subsection (2) below, if the Department of Economic Development is satisfied, on the application for such certificate as is mentioned in section 163 (2) in respect of a ship registered in the Isle of Man, or a ship registered in any country which is not a Liability Convention country that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Department of Economic Development shall issue such a certificate to the registered owner.

(1A) Subject to subsection (2) below, if the Department of Economic Development is satisfied, on the application for such a certificate as is mentioned in section 163A(2) in respect of a ship registered in the Isle of Man ~~or a ship registered in any country which is not a Bunkers Convention country~~, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Department of Economic Development shall issue such a certificate to the registered owner.

(2) The Department of Economic Development may refuse the certificate if it is of the opinion that there is a doubt whether—

- (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
- (b) the insurance or other security will cover the registered owner’s liability under section 153, or the owner’s liability under section 153A, as the case may be.

(2A) If the Department is satisfied, on the application for such a certificate as is mentioned in section 163A(2) in respect of a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Department may issue such a certificate to the registered owner.”

**References to Calculation of Tonnage in the Act**  
(Amendments specified in section 3 of this Paper)

Sections 157(4) and (5) (Liability for oil pollution from tankers) are replaced as follows –

*“Limitation of liability under section 153*

**Limitation of liability under section 153**

~~———— (4) ——— For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the *Department of Economic Development* ———~~

~~———— (5) ——— Any such order shall, so far as it appears to the *Department of Economic Development* to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.~~

(4) For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.

(5) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (4), the best available evidence shall be used in calculating the tonnage of the ship in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.”

Sections 163A (1) and (11) are amended as follows -

**“Compulsory insurance against liability for pollution from bunker oil**

(163A) (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in ~~the manner prescribed by an order made by the Department of Economic Development under paragraph 5(2) of Part II of Schedule 7~~ accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.

(163A) (11) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence shall be used in calculating the tonnage of the ship in accordance with ~~any order under paragraph 5(2) of Part II of Schedule 7~~ the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.”

Schedule 7, Part II 5(2) and 5(3) Provisions having effect in connection with Convention (LLMC) are amended as follows –

*“The general limits*

~~5. (2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Department of Economic Development.~~

~~(3) Any order under this paragraph shall, so far as appears to the Department of Economic Development to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.~~

5 (2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.

(3) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (2), the best available evidence shall be used in calculating the tonnage of the ship in accordance with the Regulations for Determining Gross and Net Tonnages of Ships contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969.”