

**EXPLANATORY MEMORANDUM TO
THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER
2008**

2008 No. 2775

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This Order designates the wreck sites of the vessel called the *London* as restricted areas under the Protection of Wrecks Act 1973 (“the 1973 Act”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Department regrets that the Order breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. The reason for this is that the case is one in which the Order needs to be made as a matter of immediate urgency because the vessel faces an imminent threat of uncontrolled salvage.
4. **Legislative Context**
 - 4.1 Section 1(1) of the 1973 Act provides that where the Secretary of State is satisfied that there is a vessel wrecked on or in the sea bed and that the site ought to be protected from unauthorised interference on account of the archaeological, historical or artistic importance of the vessel, or any objects contained or formerly contained in it which may be lying on the seabed in or near the wreck, he may by Order designate an area around the site as a restricted area. In this case, the areas designated as restricted areas are limited to the sites of the vessel. Under section 1(3) it is a criminal offence for a person to engage in certain activities in a restricted area, except under the authority of a licence issued by the Secretary of State.
 - 4.2 Section 1(4) requires the Secretary of State to consult with such persons as he considers appropriate before making a designation order unless he is satisfied that the order should be made as a matter of immediate urgency. The Secretary of State is satisfied that this is a case where an Order should be made as a matter of immediate urgency and has dispensed with a full consultation.
 - 4.3 The Committee should also be aware that the Secretary of State has exercised his powers under section 3 of the National Heritage Act 2002, to

direct English Heritage to exercise certain of his administrative functions under the 1973 Act on his behalf, in relation to wrecks situated within UK territorial waters adjacent to England. The Secretary of State is advised by a non-statutory advisory committee, the Advisory Committee on Historic Wreck Sites (ACHWS), on whether wreck sites should be designated

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Underwater cultural heritage is a devolved subject area, for which DCMS has responsibility in England. This latest proposal will bring to 61 the number of designated wreck sites around the UK coastline.

7.2 The Order to which this Memorandum relates designates two wreck sites in the Thames Estuary, both of which are believed to contain parts of the *London*, as restricted areas. The sites are about 400 metres apart.

7.3 The *London* was a three-deck Second Rate warship built in Chatham in 1654. She is known to have participated in the First Dutch War (1652-4) and later formed part of an English Squadron sent to collect Charles II from the Netherlands and restore him to his throne in an effort to end the anarchy which followed the death of Cromwell in 1658. The *London* blew-up on passage from Chatham in 1665 and is considered to merit designation on the following grounds:

- Historical importance: the *London* is a single survivor of a ship from the Commonwealth Navy, a time when British naval power was emerging on the European stage.
- Rarity: no other wreck sites from this period have been identified.
- Archaeological importance: ordnance and other finds have been identified which, with the remains of the vessel, provide unique insight into a ship of the Commonwealth Navy.

7.4 In 2007 English Heritage received notification from the Receiver of Wreck that ordnance had been salvaged from the wreck sites. It has since become aware that further uncontrolled salvage operations on the sites is planned, possibly targeting remaining ordnance. Given the accessibility of many of the remaining *in situ* artefacts, the sites are considered to be at high risk while they remain undesignated.

8. Consultation outcome

8.1 The Secretary of State is satisfied that this is a case where an order needs to be made as a matter of immediate urgency due to the threat of imminent uncontrolled salvage operations on the sites and so in accordance with section 1(4) of the 1973 Act he has dispensed with the consultation requirement.

8.2 Views were, however, invited from the Chair of the Advisory Committee for Historic Wreck Sites, the Port of London Authority, the Ministry of Defence and the Receiver of Wreck, none of whom expressed any objection to the proposals.

9. Guidance

9.1 Details of all designated wreck sites are listed in Mariner Notices and Admiralty Charts issued by the UK Hydrographic Office as well as being published on the Receiver of Wreck website. Guidance on applying for licences to such sites may be found on the English Heritage website at <http://www.english-heritage.org.uk/server/show/nav.1278>.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this instrument as no significant impact is foreseen on the private or voluntary sectors, or on the public sector.

11. Regulating small business

11.1 The legislation applies to small business because it applies to all sea users equally. It is not appropriate for the restrictions which apply within a restricted area to apply differently to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken, as with all applications for licences to undertake licensable activities in a restricted area is for the Secretary of State to consider each application on its merits, having taken into account all material considerations. No specific measures are taken to minimise the impact of the designation order on small business.

12. Monitoring & review

12.1 The condition of protected wreck sites in English waters is monitored as part of English Heritage's Heritage at Risk initiative. The ACHWS also receives reports from licensees and from inspections undertaken by the Government's contractor for archaeological services in support of the 1973 Act.

12.2 English Heritage is progressively implementing conservation statements and management plans for each of these sites.

13. Contact

John Tallantyre at the Department for Culture, Media and Sport tel: 0207 211 2373 or e-mail: John.Tallantyre@culture.gsi.gov.uk can answer any queries regarding the instrument.