

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER 2014

2014 No. 753

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 site of the vessel called the *Association* as a restricted area 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 reliable intelligence has been received that the wreck site 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, or may prove to be, the site of 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, she may by Order designate an area around the site as a restricted area. 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) of the 1973 Act requires the Secretary of State to consult with such persons as she considers appropriate before making a designation order unless she 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 her powers under section 3 of the National Heritage Act 2002, to direct English Heritage to exercise certain of her administrative functions under the 1973 Act on her behalf, in relation to wrecks situated within UK territorial waters adjacent to England. As a result, the Secretary of State is advised by English Heritage 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

• *What is being done and why*

7.1 Underwater cultural heritage is a devolved subject area, for which DCMS has responsibility in England. This latest proposal will bring to 49 the number of designated wreck sites around the English coastline.

7.2 The Order to which this Memorandum relates designates an area within a distance of 50 metres from the wreck site of the vessel "*Association*" lying at Gilstone Ledges, Isles of Scilly, as a restricted area.

7.3 The *Association* was a Second Rate warship of 90 guns ordered in 1695. It was built in Portsmouth dockyard and launched in 1697. The flagship *Association* was one of four vessels lost on 23rd October 1707 from a homeward-bound fleet returning from Gibraltar under Sir Cloudisley Shovell, Rear Admiral of England. Another vessel, the *Eagle*, was lost on the Tearing Ledge close to the Bishop Rocks (and is now a Protected Wreck Site). The *Romney* and *Firebrand* were also lost. The loss of these vessels, plus the lives of 2000 sailors, led to the Longitude Act of 1714. The size of the loss remains unparalleled in naval history.

7.4 The *Association* is considered to merit designation on the following grounds:

- historical importance: the *Association* was the flagship of the Rear Admiral of England and its method of loss and surviving remains can help improve our understanding of Second Rate warships of 90 guns, ordered under the ship list of 1688-1697;
- archaeological importance: the *Association* and its contents or former contents comprises the remains of an armed wooden sailing vessel lost in 1707 ;
- rarity: the remains of boats and ships dating to between 1500 and 1815 are extremely rare;
- vulnerability: there is a highly reliable intelligence of a threat of uncontrolled salvage to surviving material.

7.5 The *Association* had been identified by English Heritage for planned strategic designation assessment as part of its pre-1840 ships & boats project, but in the meantime it received "highly reliable" intelligence of an imminent threat of uncontrolled salvage of the surviving material. The site has therefore been prioritised for emergency designation.

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 site and so in accordance with section 1(4) of the 1973 Act she has dispensed with the consultation requirement.

8.2 Views were, however, invited from the Ministry of Defence, the Receiver of Wreck and the Crown Estate, none of whom expressed any objection to the proposals.

9. Guidance

9.1 Details of all designated wreck sites in English waters are listed in the National Heritage List for England hosted by English Heritage (<http://www.english-heritage.org.uk/professional/protection/process/national-heritage-list-for-england/>), 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. It 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.