

EXPLANATORY MEMORANDUM TO
PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) (NO.3) ORDER 2004
2004 No.3243

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. Description

2.1 This Order designates the wreck site of the Swash Channel Wreck as a restricted area under the Protection of Wrecks Act 1973.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 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, as the preamble to the Order makes clear, that the case is one in which the Order needs to be made a matter of immediate urgency (see policy background below). If the Department were to observe the 21 day rule, there is a danger that the site may be damaged and that artefacts from the wreck site will be removed and irretrievably lost before the Order comes into force.

4. Legislative Background

4.1 Section 1(1) of the Protection of Wrecks Act 1973 provides that where the Secretary of State is satisfied that there is a vessel wrecked on or in the seabed and that the site ought to be protected from unauthorised interference on account of the historical, archaeological or artistic importance of the vessel, or of 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 round the site as a restricted area. Section 1(4) 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. Under section 1(3) it is a criminal offence for a person to interfere with a designated wreck site, except under the authority of a licence issued by the Secretary of State.

4.2 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 administrative functions under the 1973 Act on her 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. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Underwater cultural heritage is a devolved subject area, for which DCMS has responsibility in England. There are over 50 designated wreck sites around the UK coastline. Wreck sites are normally designated by order on an individual basis, but details of all the designated sites are listed in Mariner Notices and Admiralty Charts issued by the UK Hydrographic Office as well as being published on the Maritime and Coastguard Agency website. English Heritage and DCMS will be updating their own websites in due course to provide full details of all these sites so that divers and other sea users are fully aware of the whereabouts of protected sites.

7.2 The Order to which this Memorandum relates designates the site of the Swash Channel Wreck as a restricted area. The existence of a wreck was only discovered in August this year and further investigation of the site by archaeologists took place in October. At the end of November, DCMS was advised by English Heritage that the site should be designated on the basis of its historical and archaeological importance. It is thought to be the wreck of a 17th century vessel which is likely to be well preserved and rare in terms of its quality and the quantity of the surviving structure. It is also of historical and archaeological importance due to its proximity to another designated wreck site (Studland Bay). The wreck has only recently become exposed in the harbour area and its location was publicised in an Environmental Statement published by Poole Harbour Commission on 18 November 2004.

7.3 The Order has been made on an emergency basis, without a full consultation having taken place (although the ACHWS have been consulted and support designation). This is because of the threat of damage to the site or of artefacts being removed from the site by divers now that the site is becoming increasingly exposed and its location has been made public. A full consultation will take place after the site has been designated and the designation may be reviewed if necessary.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no significant impact on business, charities or voluntary bodies.

9. Contact

Leila Al Kazwini at the Department for Culture, Media and Sport. Tel: 020 7211 2376 or e-mail: Leila.Alkazwini@culture.gsi.gov.uk can answer any queries regarding the instrument.