

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) (NO.5) ORDER
2006

2006 No. 1468

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**

This Order redesignates the Iona II wreck site as a restricted area under the Protection of Wrecks Act 1973.

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

The Department regrets that this 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 a matter of immediate urgency. If the Department were to observe the 21 day rule, an earlier incorrect order (The Protection of Wrecks) (England) (No.2) Order 2006) would come into force (see legislative background below).

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 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 interfere with a designated wreck site, except under the authority of a licence issued by the Secretary of State.

4.2 The site is currently designated under the Protection of Wrecks (Designation No.2) Order 1989. The Secretary of State continues to be satisfied that the Iona II site meets the designation criteria set out above. This Order revokes the existing order, and a subsequent Order (The Protection of Wrecks (England) (No.2) Order 2006) which was intended to come into force on 7th June 2006. As it was appreciated only at a very late stage that the Protection of Wrecks (England) (No.2) Order 2006 designated an incorrect area around the wreck site, this Order is made on an emergency basis, and in breach of the 21 day rule, so that this Order can come into force on the 7th June 2006, in time to ensure that the incorrect order does not take effect.

4.3 Section 1(4) requires the Secretary of State to consult with such persons as she considers appropriate before making designating a site. The Secretary of State has carried out the necessary consultation.

4.4 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

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. 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 Receiver of Wreck website.

7.2 The Order to which this Memorandum relates redesignates the *Iona II* wreck site as a restricted area. Archaeological investigations carried out in May 2005 by the Department's contractors (Wessex Archaeology), have shown that the centre of the current designated circle lies too far to the south and east. Therefore a substantial proportion of the northern area of the known site is presently unprotected.

7.3 Once the new coordinates had been determined, this redesignation was the subject of a consultation exercise conducted by English Heritage on behalf of DCMS, pursuant to section 1(4) of the Protection of Wrecks Act 1973. This consultation was circulated to interested stakeholders including maritime organisations and Government Departments for their comments. All respondents were in agreement with the consultation's proposals. This Order properly reflects the result of the consultation.

7.4 The wreck of the *Iona II* was discovered in 1976. The site was designated in 1990 because of its historical importance and remains the sole representative of merchant shipping in the steam era. The *Iona II* was built in 1863 at Govan as a fast ferry for the Clyde. Her fine hull and specially designed twin cylinder oscillating engine reputedly gave a top speed of 24 knots, and she was soon acquired by Charles Hopkins Boster of Richmond, Virginia, allegedly to run guns and supplies for the Confederate Forces in the American Civil War. She sank in 1864 on her first trans-Atlantic voyage amidst rumours about her cargo, and contemporary accounts describe intensive salvage operations. There have been many problems with illegal diving to the *Iona II* and this order is necessary to ensure the entire site is protected.

8. Impact

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

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