

EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER 2018

2018 No. 96

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order designates as a restricted area under the Protection of Wrecks Act 1973 (“the 1973 Act”) an area around the wreck site of the vessel *Rooswijk*, a Dutch East India Company vessel that sank on the Goodwin Sands in January 1740.
- 2.2 This Order also revokes the Protection of Wrecks (Designation) (England) Order 2007 (S.I. 2007/61), which previously designated a restricted area surrounding the wreck site of the *Rooswijk*. This Order adjusts the position of the restricted area and extends its radius to include archaeological material believed to be formerly contained in the *Rooswijk* which is now known to lie outside of the previous restricted area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 lying wrecked on or in the sea bed in UK waters and that the site ought to be protected from unauthorised interference on account of the archaeological, historical 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, he 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 specified activities in a restricted area, except under the authority of a licence granted 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 he considers appropriate before making a designation order. Historic England, on behalf of the Secretary of State, has carried out the necessary consultation.
- 4.3 Section 3(2) of the 1973 Act provides that an order designating a restricted area may be varied or revoked by a subsequent order made under section 1.

4.4 The Secretary of State has exercised his powers under section 3 of the National Heritage Act 2002 to direct Historic England to exercise certain of his administrative functions under the 1973 Act on his behalf. As a result, the Secretary of State is advised by Historic England on whether wreck sites within UK waters adjacent to England should be designated.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

6.1 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 the Department for Digital, Culture, Media and Sport has responsibility in England. Currently 53 wreck sites around the English coastline are designated under the Protection of Wrecks Act 1973.

7.2 The Order designates as a restricted area the area within a distance of 225 metres surrounding the wreck site of the vessel *Rooswijk* located on the Goodwin Sands, off the Kent coast.

7.3 The area around the wreck site of the *Rosswijk* was previously designated as a restricted area under the Protection of Wrecks (Designation) (England) Order 2007. The Order to which this Memorandum relates adjusts the position of the wreck site north-eastwards and enlarges the radius of the restricted area from 150 to 225 metres following further investigations of the site. The Order also revokes the 2007 Order.

7.4 The *Rooswijk* was a vessel of the Dutch East Company (Verenigde Oostindische Compagnie - VOC) built in 1737. It stranded on the Goodwin Sands on 30th December 1739 while en route from the Texel to the Dutch East Indies (modern Indonesia), sinking a few days later in January 1740. The vessel is described as a 'retourschip', a specific type of Dutch East Indiaman that was designed to withstand the lengthy voyages of 18 months to three years typically undertaken en route to Batavia (now Jakarta). The wreck of the *Rooswijk* was discovered in 2005 and the site was originally designated as a restricted area in 2007, following uncontrolled salvage, including of silver bullion (later acquired by the Dutch Treasury).

7.5 Survey and targeted excavations of the wreck site by Historic England and the Rijksdienst voor het Cultureel Erfgoed (RCE; the Cultural Heritage Agency of the Netherlands) in 2016 and 2017 under a license granted by the Secretary of State suggested that further wreck material could exist beyond the current restricted area to the north-east. This has since been confirmed as comprising at least nine cast iron cannons co-located with extensive wooden wreck material that is believed to have become dislocated from the remainder of the *Rooswijk* during the wrecking process. The Order adjusts the position of the wreck site and extends the restricted area to

protect this material, which the Secretary of State considers to be of historic and archaeological importance and vulnerable to uncontrolled salvage.

7.6 The Secretary of State has decided that the wreck site of the *Rooswijk* merits designation under the terms of the Protection of Wrecks Act 1973 because of its historic and archaeological importance, based on the following principal reasons:

- **Archaeological:** the *Rooswijk* is a rare survivor of a Dutch retourschip in North European waters;
- **Historical:** the ship is a rare survivor of a vessel directly associated with the conveying of goods direct from Europe to Indonesia during the early Georgian period;
- **Vulnerability:** component parts of the *Rooswijk* and its artefacts remain vulnerable to uncontrolled salvage.

Consolidation

7.7 No consolidation is required.

8. Consultation outcome

8.1 Views on the proposed designation of the *Rooswijk* wreck site have been invited from such persons and bodies as are considered appropriate. These were Historic England's Local Engagement Adviser for the Ramsgate Heritage Action Zone; Historic England's Maritime Archaeologist; the Heritage Adviser, Thanet District Council; the Cultural Heritage Agency of the Netherlands (owner) and their contractor; the Crown Estate; the Nautical Archaeology Society; the Association of Protected Wreck Licensees; the Receiver of Wreck; the former site salvor; the British Sub-Aqua Club; Kent & Essex IFCA; and the Marine Management Organisation.

8.2 Only one response to the consultation was received. The Nautical Archaeology Society indicated that it was supportive of the proposed amendment of the restricted area and keen to continue to work on the site in the future.

9. Guidance

9.1 Details of all designated wreck sites in English waters are listed in the National Heritage List for England hosted by Historic England, as well as being published in Mariner Notices and Admiralty Charts issued by the UK Hydrographic Office and on the Receiver of Wreck website. Guidance on applying for licences to such sites may be found online at: <https://historicengland.org.uk/advice/planning/consents/protected-wreck-sites/applying-for-licensing/>

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, voluntary or public sectors.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

- 11.3 The burden for small businesses is a need to be licensed to carry out diving operations at the wreck site. There is no fee for obtaining a licence.
- 11.4 The legislation applies to all sea users and businesses of all sizes equally since, potentially, the impact of small businesses on wreck sites can be just as detrimental as that of large businesses. As with all applications for licences to access a restricted area, it is for the Secretary of State to consider each application on its merits, having taken into account all material considerations.

12. Monitoring & review

- 12.1 The condition of protected wreck sites in English waters is monitored as part of Historic England's Heritage at Risk programme. Historic England receives reports from licensees and from inspections undertaken by the Government's contractor for archaeological services in support of the 1973 Act.
- 12.2 Historic England is progressively implementing conservation statements and management plans for each of these protected wreck sites.
- 12.3 Parliamentary Under Secretary of State, Michael Ellis, has made the following statement regarding a review provision:

“In my view it is not appropriate to make provision for review in this instrument, as a review would be disproportionate taking into account the economic impact of the provision made. The impact of the provision will be that those who wish to carry out diving or salvage operations at the site designated will need to obtain a licence granted by the Secretary of State, which are free to obtain. Only divers who wish to dive in the water immediately surrounding the wreck site will be impacted by the provision. The Secretary of State is already under a statutory duty under section 3(2)(a) of the Protection of Wrecks Act 1973 to revoke any designation order in relation to a wreck site that no longer requires protection under the Act.”

13. Contact

- 13.1 John Tallantyre at the Department for Digital, Culture, Media and Sport (Tel: 020 7211 2373 or email: John.Tallantyre@culture.gov.uk) can answer any queries regarding the instrument.