

WRECK REMOVAL CONVENTION ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Wreck Removal Convention Act 2011 which received Royal Assent on 12 July 2011. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Nairobi International Convention for the Removal of Wrecks (ICRW) was adopted by the International Maritime Organisation (IMO) in May 2007. The IMO is the United Nations specialised agency with responsibility for safety and security at sea and prevention of marine pollution from ships. The text of the ICRW is included in the Schedule to the Act.
4. The ICRW will enter in to force twelve months following the date on which ten states either have signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary General. It will apply only to wrecks that occur after its entry into force. It is anticipated the Act would be commenced when the Convention enters into force
5. The Act provides measures to enable the United Kingdom to ratify and implement the ICRW in the United Kingdom's domestic law by the insertion of new sections (255A to 255U) and a Schedule (11ZA) into the Merchant Shipping Act 1995.

OVERALL STRUCTURE OF THE ACT

6. The Act has the following two sections and a Schedule:
 - 1 Wreck Removal Convention
 - 2 Short title and commencementSchedule (text of the ICRW)

COMMENTARY ON SECTIONS

Section 1: Wreck Removal Convention

7. Section 1 inserts Part 9A, new sections 255A to 255U, and new Schedule 11ZA into the Merchant Shipping Act 1995 (the Act). Therefore the following refers to new sections of the Act. These new sections implement the ICRW, providing for the marking and removal of wrecks in the Convention area and recovery of the costs of so doing.

Section 255A – “The Wrecks Convention”

8. This new section defines “the Wrecks Convention” itself and a “Wreck Convention State”. It also inserts new Schedule 11ZA, which sets out the text of the Wrecks Convention.

Section 255B – Wreck reports

9. This new section requires the master and the operator of a ship registered in the United Kingdom to report an accident, which results in the ship, or any part of the ship or cargo becoming wreck, without delay to the State in whose Convention area it falls. Therefore if the wreck is located in the United Kingdom’s Convention area it must be reported to the Secretary of State; if the wreck is located in another State’s Convention area then the wreck must be reported to the Government of that State.
10. The new section requires the information to be reported to include that required under paragraph 2 of Article 5 of the Wrecks Convention, which may be summarised as the location, the wreck’s type, size and construction, the damage, details of the cargo and details of all oil on board.
11. The new section makes it an offence for the master and operator of a United Kingdom ship not to report a wreck. If neither reports, then each is guilty of an offence. If one has reported it, the other is no longer under a duty to report it. The offence is punishable by a fine, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255C – Locating and marking wrecks

12. This new section applies where an accident occurs in the United Kingdom’s Convention area. This new section imposes a duty on the Secretary of State to ensure that the United Kingdom complies with its obligations under Articles 7 (location) and 8 (marking) of the ICRW. In discharging this duty, the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority to take specified steps to locate and mark the wreck. Such a direction must be complied with.
13. This new section provides that for the purposes of new section 255C(3) and (4) and, where a direction is given, section 253 of the Act, a general lighthouse authority’s area will include any area that is both adjacent to the area specified in relation to the authority under section 193(1) of the Act and within the United Kingdom’s Convention area.

14. This new section specifies that any direction may require an authority to exercise or not exercise a power granted it under section 252 or 253.

Section 255D – Removal by registered owner

15. This new section applies in respect of a wreck in the United Kingdom's Convention area which the Secretary of State has determined to be a hazard. The Secretary of State must take all reasonable steps to give the registered owner notice in writing (a "wreck removal notice") to comply with the obligations imposed upon the owner by the ICRW both to arrange for the removal of the wreck and to provide evidence that they have sufficient insurance to cover their liability under the ICRW, as required by paragraph 2 and 3 of Article 9 of the ICRW.
16. The wreck removal notice must include the timescale for removal and inform the registered owner of the other matters set out in paragraph 6(b) and (c) of Article 9 of the ICRW.
17. A registered owner who does not comply with a wreck removal notice without reasonable excuse is guilty of an offence. The offence is punishable by a fine, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255E – Imposition of conditions about removal

18. This new section applies if the Secretary of State has given a registered owner a wreck removal notice. The Secretary of State may impose conditions in the wreck removal notice in accordance with paragraph 4 of Article 9 of the ICRW, to ensure removal is consistent with safety or protection of the marine environment.
19. A registered owner who does not comply with a condition under this section without reasonable excuse is guilty of an offence. The offence is punishable by fines, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255F – Removal in default

20. This new section enables the Secretary of State to remove a wreck in the United Kingdom's Convention area in the circumstances set out in paragraph 7 (registered owner does not meet deadline or is uncontactable) or 8 (immediate action is needed) of Article 9 of the ICRW. Alternatively the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority in writing to undertake the removal. A direction may only be given to an authority in relation to wrecks within that authority's area. If the Secretary of State issues a direction then this direction must be complied with.

Section 255G Liability for costs

21. This new section concerns liability for costs that have been incurred in the locating, marking or removal of any wreck within the United Kingdom's Convention area.

22. These costs may be recovered directly from the shipowner (and so, if section 255P applies, directly from the shipowner's insurer) unless the owner (or the owner's insurer) proves that any of the exceptions provided for under paragraph 1(a), (b) or (c) of Article 10 of the ICRW are applicable, or the liability is in conflict with other Conventions detailed under Article 11(1) of the ICRW or such other provisions that the Secretary of State may specify by order. An order made under this section is subject to the affirmative resolution procedure.
23. Where two ships are involved and costs cannot reasonably be separated, the registered owner's liability is to be joint and several.
24. The right to limit liability under section 185 (limitation of liability for marine claims), which gives effect to the Convention on Liability for Marine Claims, is preserved.

Section 255H – Limitation period

25. Claims under new section 255G for recovery of costs associated with locating, marking or removing a wreck are subject to a time limit. The claim must be brought within 6 years of the accident or, if sooner, within 3 years from the date on which a wreck removal notice was issued under new section 255D.

Section 255I – Expenses of general lighthouse authorities

26. This new section provides for unrecovered costs incurred by general lighthouse authorities (GLAs) in complying with directions under new sections 255C and 255F of the Act to be reimbursed from the General Lighthouse Fund (GLF) and provides for the application of section 213 of the Act. Section 213 requires payments out of the GLF to have been allowed as part of a GLA's establishment expenses or approved by the Secretary of State. Each GLA must submit an estimate of expenses in respect of lighthouses, buoys and beacon. In an emergency a GLA may incur expenses without waiting for approval, but the GLA must submit a full account expenses as soon as possible afterwards.

Section 255J – Wreck removal insurance

27. This new section covers the compulsory insurance and state certification requirements. Any ship of 300 gross tonnage and above may not enter or leave a United Kingdom port or offshore installation unless it has insurance or other security compatible with Article 12 of the ICRW ("wreck removal insurance") and carries a wreck removal insurance certificate confirming that such insurance or other security is in place.
28. The wreck removal insurance certificate of a ship registered in a Wrecks Convention State must have been issued by that State. The Secretary of State will issue the certificate for a United Kingdom flagged ship and may issue a certificate for a ship registered in a State which has not ratified the Convention.

Section 255K – Failure to insure

29. This new section provides that if a ship enters or leaves (or attempts to enter or leave) a port or offshore installation in the United Kingdom without the required certificate attesting that insurance is in place, the master and operator will commit an offence. The offence is punishable by a fine, on summary conviction to a maximum of £50,000, or on conviction on indictment (no maximum).

Section 255L – Detention of ships

30. This new section makes provision for a vessel to be detained if either the insurance or wreck removal insurance certification requirements are not complied with. Section 284 of the Act already provides for the enforcement of any detention under the Act.

Section 255M – Production of certificates

31. This new section requires the master of the ship to ensure the wreck removal insurance certificate is carried on board, and to produce it when requested. Failure to comply is an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

Section 255N – Issue of certificates

32. This new section requires the Secretary of State to issue a wreck removal insurance certificate for a United Kingdom ship on application by the registered owner if he or she is satisfied that the insurance in place will cover the liability under the Wrecks Convention. However, if the Secretary of State is not satisfied that this is the case then he or she can refuse to issue a certificate. The Registrar General of Shipping and Seamen will be sent a copy of the certificate. The Secretary of State may also issue a certificate for a ship registered in a State which is not party to the Wrecks Convention.

Section 255O – Cancellation of certificates

33. This new section allows the Secretary of State to make regulations enabling a certificate issued under section 255N to be cancelled and requiring a person to deliver up a cancelled certificate. If the certificate is not given up then this section introduces an offence where the fine upon conviction will not exceed level 4 on the standard scale (currently £2500).

Section 255P – Third parties' rights against insurers

34. This new section provides that a person who is entitled to recover costs from a shipowner under section 255G has the right of direct action against that shipowner's wreck removal insurer.
35. The insurer is allowed to limit liability in the same manner and to the same extent as the shipowner, and claim defences which would be available to the shipowner. In addition the insurer may limit liability where the shipowner is not entitled to limit liability under the International Convention on Limitation of Liability for Maritime

Claims (LLMC) 1976 and the 1996 Protocol (that is where the loss resulted from the shipowner's personal act or omission, committed with the intent to cause such loss, or recklessly and with the knowledge that such loss would probably result).

36. The insurer also has an additional defence if the incident was due to the wilful misconduct of the shipowner.
37. Similar provisions are contained in section 165 of the Act in relation to the International Convention on Civil Liability for Oil Pollution Damage 1992.

Section 255Q – Electronic certificates

38. Article 12(13) of the ICRW allows for the use of electronic insurance certificates, which would mean ships not being required to have an actual certificate of insurance when entering or leaving a port or arriving or leaving an offshore facility. To enable electronic certificates to be used in the United Kingdom, the Secretary of State would have to inform the Secretary-General of the International Maritime Organisation that the United Kingdom maintains records in an electronic format, accessible to all State Parties, attesting to the existence of the certificate.
39. Should the Secretary of State decide at some time to allow electronic certificates then appropriate changes to Part 9A inserted by this Act may be made by order, subject to the affirmative resolution procedure.

Section 255R – Interpretation

40. This new section provides that the expressions used in Part 9A are to be construed in accordance with Article 1 of the ICRW, which contains the ICRW's definitions. It adds the further definitions necessary for the purpose of Part 9A (definitions of "accident", "insurer", "wreck removal insurance", "wreck removal insurance certificate", "wreck removal notice", "the Wrecks Convention" and "Wrecks Convention State").
41. It requires the Secretary of State to take into account the matters in Article 6 of the Convention when determining whether a wreck is a hazard.
42. The Secretary of State is also required to make an order describing the United Kingdom's Convention area. The ICRW provides in Article 1 that that area is to be the Exclusive Economic Zone as established in accordance with international law, but if such a zone does not exist, a Party State may declare a zone of equivalent size. The United Kingdom does not yet have an EEZ but if one is designated in accordance with section 41 of the Marine and Coastal Access Act 2009 before the provisions come into force, that will be the Convention area. Otherwise it is proposed to declare a Convention area based on the Pollution Control Zone which is prescribed by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996 (S.I.1996/2128). It is also proposed that the United Kingdom's Convention area should include the United Kingdom's territory and territorial sea, in exercise of the option in the ICRW.

Section 255S – Government ships

43. This new section provides for the extent to which the new Part 9A applies to ships used by States. Warships and ships being used by a State for non-commercial purposes only will be excluded from the sections under Part 9A, unless a State notifies the Secretary-General of the IMO that the ICRW is to apply (Article 4, paragraph 3). The offence of not having insurance in section 255K does not apply to an ‘exempt ship’, which must have a certificate showing that it is owned by the State and that the insurance liabilities will be met. A company registered in a State as the operator of a ship owned the State is treated as the registered owner under Part 9A.

Section 255U – Power to amend

44. This new section provides an order making power under which the Secretary of State may amend Part 9A if the ICRW is amended. Orders made under this power are to be subject to affirmative resolution procedure.

Section 2: Short title and commencement

45. This section provides that the short title of the Act is the Wreck Removal Convention Act 2011 and also provides for the commencement of the Act by an order made by the Secretary of State.

The Schedule

46. The Schedule sets out new Schedule 11ZA to the Merchant Shipping Act 1995. It contains the full text of the Wreck Removal Convention.

TERRITORIAL EXTENT AND APPLICATION

47. The Act extends to England and Wales, Scotland and Northern Ireland. If necessary the Act’s provisions may be later extended to United Kingdom’s Crown Dependencies or Overseas Territories by an Order made under section 315 of the Merchant Shipping Act 1995.

COMMENCEMENT

48. The provisions in the Act will be brought into force by Order made by the Secretary of State. It is anticipated that will be when the Convention comes into force.

HANSARD REFERENCES

49. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	30 June 2010	Vol. 512 Col 869
Second Reading	19 November 2010	Vol. 518 Col 1242
Committee	7 February 2011	Hansard Public Bill Committee
Report and Third Reading	18 March 2011	Vol. 525 Cols. 589-593
House of Lords		
Introduction	21 March 2011	Vol. 726 Col 456
Second Reading	13 May 2011	Vol. 727 Col 1119-1136
Committee	10 June 2011	Vol. 728 Col 530-540
Report	29 June 2011	Vol. 728 Col 1762
Third Reading	06 July 2011	Vol. 729 Col 259

Royal Assent - 12 July 2011	House of Lords Hansard Vol. 729 Col 711 House of Commons Hansard Vol. 531 Col 211
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7/2011 14012 19585

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ISBN 978-0-10-560811-0



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