EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (FEES) REGULATIONS 2015

2015 No. 315

1. This Explanatory Memorandum has been prepared by the Maritime and Coastguard Agency ("the MCA"), an Agency of the Department of Transport, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This Statutory Instrument prescribes the fee to be charged by the MCA on applications for the issue of a wreck removal insurance certificate, as confirmation that vessels with a gross tonnage of 300 or more to which the legislation applies hold the necessary compulsory insurance as required by section 255J of the Merchant Shipping Act 1995 (as inserted by the Wreck Removal Convention Act 2011).

2.2 The fee is charged in order to recover the costs of the MCA in conducting this work.

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

3.1 None

4. Legislative Context

4.1 In 2007 the International Maritime Organization (IMO), of which the UK is a State member, introduced the Nairobi International Convention on the Removal Wrecks. The Convention fills a gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks. The Convention provides the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine and coastal environment. It makes shipowners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal.

4.2 Owners of seagoing ships with a gross tonnage of 300 or more will be required to maintain insurance or other financial security to cover the costs of locating, marking and removal of wreck up to the limits set out in the Convention on Limitation of Liability for Marine Claims 1976, as amended. A seagoing ship means a vessel of any type whatsoever and includes hydrofoil boats, air cushion vehicles, submersibles, floating

craft and floating platforms except when such platforms are on location engaged in seabed exploration or production of seabed minerals.

4.3 It will be an offence for the master and operator of a vessel, to which this legislation applies, to fail to have the appropriate wreck insurance / financial security in place. It will also be an offence for the master of such a vessel to fail to ensure the certificate is carried on the vessel and produced on demand. Any vessel not appropriately insured or unable to demonstrate it is so insured is liable to be detained. The MCA will act as the appropriate licensing and enforcement authority.

4.4 The ICRW is due to enter into force internationally on 14 April 2015 and the intention is to commence the Wreck Removal Convention Act 2011 to coincide with this.

4.5 In addition to these Regulations, the Merchant Shipping (United Kingdom Wreck Convention Area) Order 2015 will define the area to which the Act applies. Certificates will be required by UK flagged vessels leaving or entering any port. Certificates are also required by foreign flagged vessels entering any UK port.

4.6 The Wreck Removal Convention Act 2011 (Commencement) Order 2015 commences the 2011 Act sufficiently to enable these Regulations and to enable the Merchant Shipping (United Kingdom Wreck Convention Area) Order 2015, which describes the United Kingdom's Wreck Removal Convention Area, to be made. The remainder of the Act will come into force on 14 April 2015.

5. Territorial Extent and Application

5.1 This instrument applies throughout the United Kingdom, its territorial waters and Exclusive Economic Zone (EEZ.

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

7.1 The Wreck Convention provides the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine and coastal environment. It makes shipowners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal.

7.2 The UK, as one of the signatory states to the Wreck Convention, is obliged to issue UK flagged vessels with a certificate after confirming the vessel holds the

appropriate insurance / financial security to cover their liability in respect shipwrecks. It is the intention of the UK administration, through the MCA, to afford this service to non UK flagged vessels whose administrations are not yet signatories to the convention. The fee for the issue of certificates will be the same for UK and non UK flagged vessels.

7.3 The MCA is expected to achieve full cost recovery in applying its regulatory functions through the use of fees. The issue of wreck removal insurance certificates, on behalf of the Secretary of State for Transport, is a new obligation. Cost recovery for these new certificates is in line with similar activity undertaken by the MCA.

7.4 Vessels to which the wreck convention applies must be in possession of the required certificate on commencement of the Wreck Removal Convention Act 2011 on 14 April 2015. It is therefore necessary to have the Fees Regulations in place sufficiently in advance of this date to allow certificates to be issued and the cost to the MCA of doing so recovered by that date.

7.5 No consolidation is considered possible unless or until the Merchant Shipping (Fees) Regulations 2006 are reviewed.

8. Consultation outcome

8.1 Industry and other stakeholders were consulted on the implementation of the ICRW as part of the draft Marine Navigation Bill, which was published on 5 May 2008.

8.2 An Impact Assessment for the implementation of the wreck convention was completed in 2014. As part of this undertaking, organisations representing ship owners were consulted as to the financial implication of implementing the wreck convention. It was considered these were low as most vessels already hold sufficient insurance to meet their obligation under the Act. This view included the low cost of the certificate fee. The Impact Assessment was based on the fees charged for similar certificates by the MCA at that time.

9. Guidance

9.1 The MCA has produced Marine Information Notice (MIN) 499 to provide detailed guidance to the industry as to the application of the Act and the requirement of obtaining a certificate. The MIN will be placed on the Gov.UK website.

10. Impact

10.1 An Impact has been prepared which considered the regulatory impact of the implementation of the Act (see annex). The impact on business is estimated to be of minimal cost because these Regulations are principally concerned with recovering the small cost incurred by the MCA in issuing the certificates.

10.2 The impact on the public sector is minimal as the MCA already has the processes in place for issuing such certificates. Increases in staff hours to meet demand will be met through the fee charged

10.3 The Impact Assessment is published with the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The Act will apply equally to large and small businesses. The impact on small business is estimated as low, requiring only the payment of the certificate fee as sufficient insurance cover is already held by most vessels.

12. Monitoring and review

12.1 The introduction of this fee aims to achieve full cost recovery in the issuing and administering wreck removal insurance certificates. The cost of issuing certificates will be reviewed on a regular basis in line with the MCA's existing approach to fee related matters more generally.

13. Contact

Mark Flavell at the Maritime & Coastguard Agency, telephone: 023 8032 9179, or email: mark.flavell@mcga.gov.uk can answer any queries regarding the instrument.