EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) (NO. 2) ORDER 2016

2016 No. 841

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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 HMT *Arfon*, a requisitioned trawler mined on 30th April 1917 with the loss of ten lives.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department regrets that the Order breaches the rule that statutory instruments subject to the negative resolution procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force.

Historic England submitted its assessment of the wreck of the *Arfon*'s suitability for designation on 22 July. Historic England was subsequently informed by the finder of the wreck (the applicant) that its location site had been discovered by a local dive group which had been actively searching for it.

The Secretary of State considers it necessary to designate the wreck site as a restricted area as soon as possible to address the risk of uncontrolled salvage. This will protect the historical and archaeological importance of the *Arfon*: the majority of the vessel survives, and it retains a number of key characteristic features and fittings, including its undocumented mine-sweeping equipment, deck gun, engine dials and engine room telegraph.

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 a site in relevant waters is, or may prove to be, the site of a vessel lying wrecked on or in the sea bed 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 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, otherwise than 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 she considers appropriate before making a designation order. Historic England, on behalf of the Secretary of State, has carried out the necessary consultation.

4.3 The Secretary of State has exercised her powers under section 3 of the National Heritage Act 2002 to direct Historic England to exercise certain of her administrative functions under the 1973 Act on her 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 Culture, Media and Sport has responsibility in England. Currently 51 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 50 metres from the wreck site of the vessel HMT Arfon, located nearly four kilometres south of St. Alban's Head, Dorset.

7.3 HMT *Arfon* ("the *Arfon*") was built and launched in 1908 in Goole, East Riding of Yorkshire, on the River Ouse, for the Peter Steam Trawling Company of Milford in South Wales. It was a 227-ton ketch-rigged steel trawler that was requisitioned by the Royal Navy in 1914 and fitted with a 6 pounder gun and mine-sweeping apparatus. For nearly three years the *Arfon* worked out of Portland Harbour naval base sweeping mines laid by U-boats along the inshore shipping lanes off Dorset until it sank in under 2 minutes on 30 April 1917, having struck a mine laid by UC-61. Nine of the *Arfon's* crew perished in the loss, including the vessel's captain, John Abrams, Royal Naval Reserve (RNR), with only three survivors who were blown overboard by the mine's explosion.

7.4 The Secretary of State has decided that the wreck of the *Arfon* should be designated under the 1973 Act for the following principal reasons:

- Survival: despite the effects of natural decay, the majority of the vessel survives and it retains a number of key characteristic features and fittings, including its undocumented mine-sweeping equipment, deck gun, engine dials and engine room telegraph;

- Rarity: the well-preserved remains of trawlers from the early 20th century are rare as there are no steam trawlers in the National Historic Ships Register. The *Arfon* is the only known archaeologically recorded and accessible wreck of this once-common type that otherwise survives only partially through documentary records;
- Potential: the vessel has considerable potential for providing insight into early 20th century construction materials and techniques and for fishing, fishermen and mine-sweeping during this period;
- Vulnerability: the wreck remains vulnerable to souvenir hunters and uncontrolled salvage;
- Documentation: the importance of this vessel is considerably enhanced by the information obtained from archaeological survey and surviving construction and Admiralty records; and
- Historic: the trawler has representative qualities related to the early 20th fishing fleets of Northern Europe and the role of fishermen in the RNR, shedding particular light on to the role of RNR crews called-up from trade to coastal defence and mine-sweeping duties, which HE considers an under-appreciated element of the national narrative of the First World War. The site is also the war grave of the nine crewmen lost in the vessel's sinking.

Consolidation

7.5 No consolidation is required.

8. Consultation outcome

8.1 The following have been consulted by Historic England on behalf of the Secretary of State: the applicant; the Ministry of Defence; Oil and Gas Authority; Navigation Directorate, Trinity House; Anthony Firth, Fjordr Ltd; the UK Hydrographic Office; the Crown Estate; the Nautical Archaeology Society; the Southern Inshore Fisheries & Conservation Authority; HM Receiver of Wreck; the British Sub-Aqua Club; the Maritime Archaeology Trust; the Marine Management Organisation; and Dorset County Council.

8.2 No objections to designation were received, the only substantive comments being that:

- The Ministry of Defence indicated that it would not be forwarding the Arfon for designation under the Protection of Military Remains Act 1986.
- The British Sub Aqua Club expressed concern that the threat of plunder by divers is largely unsubstantiated, but recognised that the catalogue of extant ship's structures and fittings do indicate that she is in a remarkable state of survival, and deserves some protection. However, it suggests that local divers could be productively used if they could be encouraged to record and report on what they see rather than being excluded.
- The Maritime Archaeology Trust, which has been undertaking research on a large number of First World War ships as part of the Forgotten Wrecks Project, offered some further sources of information and broader background related to the identification and significance of the Arfon. It expressed delight at the prospect of designation, noting that 'it is extremely rare to find wrecks in 40 metres of water that are relatively intact and have not had portable artefacts, fixtures and fittings removed from them'. It also confirmed the

vulnerability of the wreck, which lies in an area 'where extensive diving activity takes place'.

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 increased burden on small businesses is the 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 The Parliamentary Under Secretary of State, Tracey Crouch, 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 designated site 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 affected 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 Culture, Media and Sport Telephone: 020 7211 2373 or email: John.Tallantyre@culture.gov.uk can answer any queries regarding the instrument.