EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER 2012

2012 No. 1773

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. Purpose of the instrument

2.1 This Order designates two areas around the wreck sites of the vessel called the *London* as restricted areas under the Protection of Wrecks Act 1973 ("the 1973 Act").

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

3.1 None.

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, a vessel wrecked on or in the sea bed 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, he may by Order designate an area around the site as a restricted area. In this case, the areas designated as restricted areas are limited to the sites of the vessel. Under section 1(3) it is a criminal offence for a person to engage in certain activities in a restricted area, except under the authority of a licence issued by the Secretary of State.

4.2 Section 3(2) of the 1973 Act provides that an order made under section 1 may be revoked by a subsequent order under that section.

4.3 Two restricted areas around what was thought to be the full extent of the wreck sites of the *London* were designated by the Protection of Wrecks (Designation) (England) Order 2008 (S.I. 2008/ 2775) **.** Following the provision of more accurate information about the extent of the sites, this Order revokes the 2008 Order and re-designates the areas around the wreck, thereby extending the size of one of the restricted areas by 25 metres. In making this Order, the Secretary of State continues to be satisfied that the *London* sites meet the designation criteria set out above.

4.4 Section 1(4) of the 1973 Act requires the Secretary of State to consult with such persons as he considers appropriate before making an order under section 1 of that Act. The Secretary of State has carried out the necessary consultation.

4.5 The Committee should also be aware that the Secretary of State has exercised

his powers under section 3 of the National Heritage Act 2002, to direct English Heritage to exercise certain of his administrative functions under the 1973 Act on his behalf, in relation to wrecks situated within UK territorial waters adjacent to England. The Secretary of State is advised by English Heritage on whether wreck sites should be designated.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 DCMS has responsibility in England. Currently 61 wreck sites around the UK coastline are designated under the Protection of Wrecks Act 1973.

7.2 The Order to which this Memorandum relates re-designates two wreck sites located in The Nore, Thames Estuary, off Southend-on-Sea, Essex, both of which are believed to contain the remains of the *London*, as restricted areas. The sites are about 400 metres apart.

7.3 The *London* was a second rate 'Large Ship' built in Chatham in 1654 during the Interregnum. She is known to have participated in the First Dutch War (1652-4) and later formed part of an English Squadron sent to collect Charles II from the Netherlands and restore him to his throne in an effort to end the anarchy which followed the death of Cromwell in 1658. The London blew-up on passage from Chatham in March 1665.

7.4 The wreck sites of the *London* are currently designated under the Protection of Wrecks (Designation) (England) Order 2008 and fall within two restricted areas. The wreck was considered to merit designation on the following grounds:

- Historical importance: the London is a single survivor of a ship from the Commonwealth Navy, a time when British naval power was emerging on the European stage.
- Rarity: no other wreck sites from this period have been identified.
- Archaeological importance: ordnance and other finds have been identified which, with the remains of the vessel, provide unique insight into a ship of the Commonwealth Navy.

7.5 Following archaeological investigations in 2010 parts of the *London* wreck were discovered to lie outside one of the restricted areas. The effect of this Order is to extend this restricted area by 25m southward, thereby allowing the whole of the known site to be protected. The Secretary of State is satisfied that the wreck of the *London* continues to merit designation on the same grounds which applied in relation to the 2008 designation.

- ***Consolidation***

7.6 The Instrument revokes the Protection of Wrecks (Designation) (England) Order 2008 (S.I. 2008/ 2775) and re-designates the restricted areas.

8. Consultation outcome

8.1 Views were obtained from the former Government Advisory Committee on Historic Wreck Sites and the Port of London Authority, both supported the proposal.

9. Guidance

9.1 Details of all designated wreck 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. Guidance on applying for licences to such sites may be found on the English Heritage website at: http://www.english-heritage.org.uk/professional/advice/our-planning-role/consent/protected-wreck-sites/

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 or voluntary sectors, or on the public sector.

11. Regulating small business

11.1 The legislation applies to small business because it applies to all sea users equally. It is not appropriate for the restrictions which apply within a restricted area to apply differently to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken, as with all applications for licences to undertake licensable activities in a restricted area is for the Secretary of State to consider each application on its merits, having taken into account all material considerations. No specific measures are taken to minimise the impact of the designation order on small business.

12. Monitoring & review

12.1 The condition of protected wreck sites in UK territorial waters adjacent to England is monitored as part of English Heritage's Heritage at Risk initiative. English Heritage also receives reports from licensees and from inspections undertaken by the Government's contractor for archaeological services in support of the 1973 Act.

12.2 English Heritage is progressively implementing conservation statements and management plans for each of these sites.

13. Contact

13.1 James Burke or Andrew Doidge at the Department for Culture, Media and Sport Tel: 0207 211 6476 or 0207 211 2364 or email: james.burke@culture.gsi.gov.uk or andrew.doidge@culture.gsi.gov.uk can answer any queries regarding the instrument.