EXPLANATORY MEMORANDUM TO

THE PROTECTION OF WRECKS (DESIGNATION) (ENGLAND) ORDER 2019

2019 No. 1068

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.

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 site of an unknown wreck off Eastbourne believed to be the remains of a 17th century Dutch vessel.

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.

3.2 The reason for breaching this rule is that the Secretary of State considers it necessary to designate the wreck site as a restricted area as a matter of immediate urgency to address the risk of uncontrolled salvage and the risk of further trawler net damage. We have received advice from Historic England that on 2nd May 2019 it received a report from the Nautical Archaeology Society regarding the discovery at Easter 2019 of a newly identified wooden shipwreck. The site had become exposed due to shifting sand, which have led to remarkably well preserved cannon and smaller finds being exposed on and around the wreck. There are two separate risks. First, the risk of uncontrolled salvage is likely to increase were the Order to be laid for 21 days before coming into force, given that this would make knowledge of the discovery and location of the wreck publicly available before it is suitably protected. Second, Historic England has advised that evidence of fresh trawler net damage to the site has been reported. The site would remain vulnerable to trawler net damage were the Order to be laid for 21 days before coming into force.

3.3 Designation by Order will protect the historical and archaeological importance of the wreck: it consists of the remains of a wooden vessel that is associated with cannon (including at least five of bronze and eight of iron), galley bricks, concreted objects, large dressed stone blocks, and the probable base of a copper cauldron.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 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, the Secretary of State 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.

6.2 Before making a designation order, section 1(4) of the 1973 Act requires the Secretary of State to consult with such persons as the Secretary of State considers appropriate having regard to the purposes of the order. Historic England, on behalf of the Secretary of State, has carried out the necessary consultation.

6.3 The Secretary of State has exercised 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.

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 1973 Act**.**

7.2 The Order designates as a restricted area a circular area of radius 100 metres surrounding the unknown wreck site off Eastbourne, East Sussex.

7.3 The wreck was first identified in Easter 2019 when Dive125, based out of Eastbourne, took two divers out to dive an unidentified obstruction recorded by the UK Hydrographic Office. During this dive, bronze cannon were observed on the seabed.

7.4 On 29 and 30 April 2019, Dive125 returned to the site with members of the Nautical Archaeology Society (NAS) to explore the wreck in more detail. In a verbal report made to Historic England, the NAS confirmed the presence of at least five bronze cannon (possibly seven), some of which had markings on them. Divers also saw at least eight iron cannons as well as galley bricks, miscellaneous concreted objects, large dressed stone blocks and the probable base of a copper cauldron.

7.5 Initial assessment, based on the cannon and galley brick morphology, indicates that the wreck may be of C17 Dutch origin, perhaps associated with either the Battle of Portland (1652) or the Battle of Beachy Head (1690); documentary research is on-going. If the wreck does represent the remains a former Dutch vessel, then it remains in the ownership of the Government of The Netherlands.

7.6 The Secretary of State has decided that the remains of the unknown wreck site off Eastbourne should be designated under the 1973 Act because of its historical and archaeological importance, based on the following principal reasons:

- **Historical importance:** the discovery of an assemblage of at least five previously undisturbed bronze cannon is a rare occurrence. The association of other material provides an initial interpretation that this wreck comprises the remains of a C17 Dutch vessel.
- **Archaeological importance:** the recent discovery of this wreck is suggestive of a long period of burial which indicates the possible presence of a range of small finds and organic material. In addition the bronze cannon and other artefacts exposed on the seabed remain vulnerable to uncontrolled salvage and theft.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 Views on the proposed designation of this wreck site have been invited from such bodies and persons as were considered appropriate having regard to the purpose of the order to protect the wreck site, particularly in light of the vulnerability of the wreck site to the threat of uncontrolled salvage and trawler net damage.

10.2 The following have been consulted by Historic England on behalf of the Secretary of State: the Crown Estate; Wessex Archaeology; the Nautical Archaeology Society (NAS); the Receiver of Wreck; the UK Hydrographic Office; and the Dutch Heritage Agency *Rijksdienst voor het Cultureel Erfgoed* (given that the wreck may be of Dutch origin).

10.3 Only two responses were received:

- The Chief Executive Officer of the Nautical Archaeology Society offered the Society's support for urgent designation.
- The Head of Coastal at the Crown Estate noted the proposed designation but offered no comments.

11. Guidance

11.1 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. Historic England notifies interested parties of new

designations, including those parties it has previously consulted. 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/

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. The impact of the provisions of the Order is that those wishing to carry out diving or salvage operations at the designated site will need to obtain a licence granted by the Secretary of State, which is free to obtain, and that only those divers who wish to dive in the waters immediately surrounding the wreck site are impacted. A de minimis assessment was carried out and concluded that there would be no significant impact on businesses or the public sector.

13. Regulating small business

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

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

13.3 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.

13.4 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.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is as follows: 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.

14.2 Historic England is progressively implementing conservation statements and management plans for each of these protected wreck sites.

14.3 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Secretary of State, Jeremy Wright, has made the following statement:

"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."

15. Contact

15.1 John Tallantyre at the Department for Digital, Culture, Media and Sport (telephone: 020 7211 2373 or email: John.Tallantyre@culture.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Giles Smith, Deputy Director for Heritage, Tourism and Cultural Diplomacy, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Secretary of State, Jeremy Wright, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.