



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Wreck Removal Convention Act 2011

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

July 2016



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Introduction

1. This memorandum provides a preliminary assessment of the Wreck Removal Convention Act 2011 (hereafter “The Act”) and has been prepared by the Department for Transport for submission to the Transport Select Committee. It will be published as part of the process set out in the document Post Legislative Scrutiny – the Government’s Approach (CM 7320) (as published in March 2008).

Objectives of the Wreck Removal Convention Act 2011

2. The Act received Royal Assent on 12 July 2011. It provides measures to enable the United Kingdom to ratify and implement the Nairobi International Convention for the Removal of Wrecks (ICRW) into the United Kingdom’s domestic law by the insertion of new sections and a Schedule into the Merchant Shipping Act 1995. The ICRW itself was adopted by the International Maritime Organisation in May 2007. The Act, however, did not come into force in the UK until 14 April 2015 when the Convention came into force internationally, having been ratified by a minimum of 10 State Parties.

3. The Act imposes a uniform legal obligation on shipowners to locate, mark and remove, or have removed, wrecks which pose a hazard to navigation and the marine environment. It also improves the prospect for a State (in this case, the UK for the purposes of the Act) recovering its costs in full by imposing liability and compulsory insurance on shipowners, which is in line with the polluter pays principle.

4. The ‘polluter pays’ principle makes the party responsible for producing pollution (in this case, the owner of a wrecked vessel) and any pollution arising from it, liable for paying for the damage done to the natural environment. It was developed between 1972 and 1974 by the Environment Committee of the Organisation for Economic Co-operation and Development (OECD). The principle has since been

further developed and strengthened. In the context of the ICRW, this principle is applied to assist a State Party in recovering from the ship-owner the costs associated with locating, marking and removing a wreck.

5. Until the introduction of the Act, the UK did not have powers to compel shipowners to remove all wrecks either in UK territory or the exclusive economic zone (EEZ). Entry into force of the ICRW in the UK has provided the basis for such power as implemented by the Wreck Removal Convention Act 2011 and ensure that in most cases the Government is able to recover its full costs, including those associated with any preventative action that may have been taken to prevent pollution or other hazards emanating from the wreck, from the registered owner through a simplified regime of liability, compulsory insurance and direct action against the insurer.

6. The Secretary of State acting through his Representative for Salvage and Intervention (SOSREP), the Receiver of Wreck, Harbour and Conservancy Authorities and the Lighthouse Authorities all had different powers in relation to wrecks. The arrangements did not, however, allow any of them to act on a non-UK ship outside the territory or territorial sea, except where SOSREP had to act to deal with a pollution risk. The entry into force of the ICRW into UK law through the Act enables the UK to act on wrecks, whatever the hazard or flag, in the EEZ, as well as making the registered owner liable for costs and requiring the owner to have proper and adequate insurance cover. Through the Act the UK is also able to exercise its option to apply the ICRW in its territory and territorial sea and allow similar action and cost recovery in these areas where wrecks and associated hazards cause a threat to navigation and environmental damage.

7. The UK has well developed arrangements for dealing with maritime casualties, including wrecked ships. There are powers conferred by the Merchant Shipping Act (MSA) 1995 and they are utilised as required. A number of recent high profile incidents have called upon these arrangements, in particular the grounding of the *MSC Napoli* in January 2007 and the RoRo (Roll on – Roll off) ferry *Riverdance* that grounded on the North Shore of Blackpool in January 2008.

8. The UK is a party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The provisions of UNCLOS relating to the prevention, reduction and control of pollution of the marine environment from ships strike a balance between the measures which a coastal State can take within its territory and territorial sea (which extends 12 nautical miles out from the coast) and EEZ or equivalent area (which extends up to 200 nautical miles from the edge of the territorial sea), and the navigational rights of foreign ships in those zones. The UK's EEZ was adopted in March 2014.

9. Registered owners of a ship of 300 gross tonnage and above and flying the UK flag are required to maintain insurance to cover their liabilities to an amount equal to the limits of liability under the applicable national or international limitation regime. This amount cannot exceed the limit calculated in accordance with Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. These requirements also apply to non-UK vessels entering UK waters.

10. Since the Wreck Removal Act came into force in 2015, the Maritime and Coastguard Agency (MCA, an executive agency of the Department for Transport) has issued 17,500 State certificates to date, of which just under 16,000 have been for non-UK registered vessels. Such certificates attest that ship-owners have in place appropriate levels of insurance in order to cover their liabilities under the ICRW and, therefore, the Act.

Implementation

11. The Merchant Shipping (Fees) Regulations 2015 (S.I. 2015/315), which came into force on 23 March 2015, provide the MCA with the necessary powers to charge a fee for issuing State certificates attesting that ship-owners have insurance in place.

12. Evidence is required of an insurance company's financial standing and solvency to show that it can meet its obligations and liabilities under the Wreck Convention. The International Maritime Organisation's Legal Committee established a criteria for approving maritime insurers and this includes, but is not limited to, insurers providing adequate documentation, such as audited financial statements for

the previous three years and annual reports; evidence that the insurer is approved and authorised to carry out insurance business in the country of that authority; the rating that the insurance company and/or its reinsurers hold by an independent and internationally recognised rating agency. Although the IMO criteria does not specify the credit rating level, in the UK, the minimum credit rating for approval is a long term rating of “triple B” meaning that the insurer has adequate capacity to meet its financial obligations.

13. The MCA undertake regular checks of maritime insurers and require formal notification if there have been any changes to the insurers financial status or business arrangements since they were last approved, thereby mitigating the risk of an insurer defaulting.

Conclusion

14. The Act has now been in place for just over a year. To date no circumstances or situations have arisen in or around UK waters that has warranted Government intervention through the powers of the Act.

15. The Act provides an important legislative element in ensuring that, in the event of an incident involving a wreck, where there may be a navigational or environmental hazard, action can be taken swiftly and effectively to ensure that the incident is resolved as quickly as possible and that associated costs relating to a wreck are recouped by ensuring that ship-owners and insurers are held liable.

16. However, due to an ever changing environment within the maritime world, with larger vessels operating in and out of bigger ports, the Department will continue to review the provisions of the Act to ensure that it continues to be able to meet expectations of those causing or being affected by wrecks in and around UK waters and that costs arising from a wrecked vessel can be quickly and fully recouped by the victims.

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