

# **WRECK REMOVAL CONVENTION BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Wreck Removal Convention Bill as brought from the House of Commons on 21st March 2011. They have been provided by the Department for Transport with the consent of Baroness Stowell of Beeston the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND SUMMARY**

3. The Nairobi International Convention for the Removal of Wrecks (ICRW) was adopted by the International Maritime Organisation (IMO) in May 2007. The IMO is the United Nations specialised agency with responsibility for safety and security at sea and prevention of marine pollution from ships. The text of the ICRW is included in the Schedule to the Bill.
4. The ICRW will enter into force twelve months following the date on which ten member states either have signed it without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval, or accession with the IMO Secretary General. It will apply only to wrecks that occur after its entry into force. It is anticipated the Bill will commence when the Convention enters into force.
5. The Bill provides measures to enable the United Kingdom to ratify and implement the ICRW in the United Kingdom's domestic law by the insertion of new sections (255A to 255U) and a Schedule (11ZA) into the Merchant Shipping Act 1995.

### **OVERALL STRUCTURE OF THE BILL**

6. The Bill has the following two clauses and a Schedule:

1 Wreck Removal Convention

2 Short title and commencement

Schedule (text of the ICRW)

## **COMMENTARY ON CLAUSES**

### **Clause 1 : Wreck Removal Convention**

7. Clause 1 inserts Part 9A, new sections 255A to 255U, and new Schedule 11ZA into the Merchant Shipping Act 1995 (the Act). Therefore the following refers to new sections of the Act. These new sections implement the ICRW, providing for the marking and removal of wrecks in the Convention area and recovery of the costs of so doing.

#### *Section 255A – “The Wrecks Convention”*

8. This new section defines “the Wrecks Convention” itself and a “Wreck Convention State”. It also inserts new Schedule 11ZA, which sets out the text of the Wrecks Convention.

#### *Section 255B – Wreck reports*

9. This new section requires the master and the operator of a ship registered in the United Kingdom to report an accident, which results in the ship, or any part of the ship or cargo becoming wreck, without delay to the member state in whose Convention area it falls. Therefore if the wreck is located in the United Kingdom’s Convention area it must be reported to the Secretary of State; if the wreck is located in another state’s Convention area then the wreck must be reported to the government of that state.
10. The new section requires the information to be reported to include that required under paragraph 2 of Article 5 of the Wrecks Convention, which may be summarised as the location, the wreck’s type, size and construction, the damage, details of the cargo and details of all oil on board.
11. The new section makes it an offence for the master and operator of a United Kingdom ship not to report a wreck. If neither reports, then each is to be guilty of an offence. If one has reported it, the other is no longer under a duty to report it. The offence is to be punishable by a fine, to a maximum of £50,000 on summary conviction, or to no maximum on conviction on indictment (no maximum).

#### *Section 255C – Locating and marking wrecks*

12. This new section applies where an accident occurs in the United Kingdom’s Convention area. This new section imposes a duty on the Secretary of State to ensure

that the United Kingdom complies with its obligations under Articles 7 (location) and 8 (marking) of the ICRW. In discharging this duty, the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority to take steps he or she specifies to locate and mark the wreck. Such a written direction must be complied with.

13. This new section provides that for the purposes of new section 255C(3) and (4) and, where a direction is given, section 253 of the Act, a general lighthouse authority's area will include any area that is both adjacent to the area specified in relation to the authority under section 193(1) of the Act and within the United Kingdom's Convention area.
14. This new section specifies that any direction may require an authority to exercise or not exercise a power granted it under section 252 or 253.

*Section 255D – Removal by registered owner*

15. This new section applies in respect of a wreck in the United Kingdom's Convention area which the Secretary of State has determined to be a hazard. The Secretary of State must take all reasonable steps to give the registered owner notice in writing (a "wreck removal notice") to comply with the obligations imposed upon the owner by the ICRW both to arrange for the removal of the wreck and to provide evidence that they have sufficient insurance to cover their liability under the ICRW, as required by paragraph 2 and 3 of Article 9 of the ICRW.
16. The wreck removal notice must include the timescale for removal and inform the registered owner of the other matters set out in paragraph 6(b) and (c) of Article 9 of the ICRW.
17. A registered owner who does not comply with a wreck removal notice without reasonable excuse is guilty of an offence. The offence is to be punishable by a fine, to a maximum of £50,000, on summary conviction, or to no maximum on conviction on indictment.

*Section 255E – Imposition of conditions about removal*

18. This new section applies if the Secretary of State has given a registered owner a wreck removal notice. The Secretary of State may impose conditions in the wreck removal notice in accordance with paragraph 4 of Article 9 of the ICRW, to ensure removal is consistent with safety or protection of the marine environment.
19. A registered owner who does not comply with a condition under this section without reasonable excuse is guilty of an offence. The offence is to be punishable by fines, on summary conviction to a maximum of £50,000, or to no maximum on conviction on indictment.

*Section 255F – Removal in default*

20. This new section enables the Secretary of State to remove a wreck in the United Kingdom's Convention area in the circumstances set out in paragraph 7 (registered owner does not meet deadline or is uncontactable) or 8 (immediate action is needed) of Article 9 of the ICRW. Alternatively the Secretary of State may direct a general lighthouse authority, harbour authority or conservancy authority in writing to undertake the removal. A direction may only be given to an authority in relation to wrecks within that authority's area. If the Secretary of State issues a direction then this direction must be complied with.

*Section 255G Liability for costs*

21. This new section concerns liability for costs that have been incurred in the locating, marking or removal of any wreck within the United Kingdom's Convention area.
22. These costs may be recovered directly from the shipowner (and so, if section 255P applies, directly from the shipowner's insurer) unless the owner (or insurer) proves that any of the exceptions provided for under paragraph 1(a), (b) or (c) of Article 10 of the ICRW are applicable, or the liability is in conflict with other Conventions detailed under Article 11(1) of the ICRW or such other provisions that the Secretary of State may specify by order. An order made under this section is to be subject to the affirmative resolution procedure.
23. Where two ships are involved and costs cannot reasonably be separated, the registered owner's liability is to be joint and several.
24. The right to limit liability under section 185 (limitation of liability for marine claims), which gives effect to the Convention on Liability for Marine Claims, is preserved.

*Section 255H – Limitation period*

25. Claims under new section 255G for recovery of costs associated with locating, marking or removing a wreck are subject to a time limit. The claim must be brought within 6 years of the accident or, if sooner, within 3 years from the date on which a wreck removal notice was issued under new section 255D.

*Section 255I – Expenses of general lighthouse authorities*

26. This new section provides for unrecovered costs incurred by general lighthouse authorities (GLAs) in complying with directions under new sections 255C and 255F of the Act to be reimbursed from the General Lighthouse Fund (GLF) and provides for the application of section 213 of the Act. Section 213 requires payments out of the GLF to have been allowed as part of a GLA's establishment expenses or approved by the Secretary of State. Each GLA must submit an estimate of expenses in respect of

lighthouses, buoys and beacons. In an emergency a GLA may incur expenses without waiting for approval, but the GLA must submit a full account expenses as soon as possible afterwards.

*Section 255J – Wreck removal insurance*

27. This new section covers the compulsory insurance and state certification requirements. Any ship of 300 gross tonnage and above may not enter or leave a United Kingdom port or offshore installation unless it has insurance or other security compatible with Article 12 of the ICRW (“wreck removal insurance”) and carries a wreck removal insurance certificate confirming that such insurance or other security is in place.
28. The wreck removal insurance certificate of a ship registered in a Wrecks Convention State must have been issued by that state. The Secretary of State will issue the certificate for a United Kingdom flagged ship and may issue a certificate for a ship registered in a state which has not ratified the Convention.

*Section 255K – Failure to insure*

29. This new section provides that if a ship enters or leaves (or attempts to enter or leave) a port or offshore installation in the United Kingdom without the required certificate attesting that insurance is in place, the master and operator will commit an offence. The offence is to be punishable by a fine, to a maximum of £50,000, on summary conviction, or to no maximum on conviction on indictment.

*Section 255L – Detention of ships*

30. This new section makes provision for a vessel to be detained if either the insurance or wreck removal insurance certification requirements are not complied with. Section 284 of the Act already provides for the enforcement of any detention under the Act.

*Section 255M – Production of certificates*

31. This new section requires the master of the ship to ensure the wreck removal insurance certificate is carried on board, and to produce it when requested. Failure to comply is an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

*Section 255N – Issue of certificates*

32. This new section requires the Secretary of State to issue a wreck removal insurance certificate for a United Kingdom ship on application by the registered owner if he or she is satisfied that the insurance in place will cover the liability under the Wrecks Convention. However, if the Secretary of State is not satisfied that this is the case then he or she can refuse to issue a certificate. The Registrar General of Shipping and

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as brought from the House of Commons on 21st March 2011 [HL Bill 59]*

Seamen will be sent a copy of the certificate. The Secretary of State may also issue a certificate for a ship registered in a State which is not party to the Wrecks Convention.

*Section 255O – Cancellation of certificates*

33. This new section allows the Secretary of State to make regulations enabling a certificate issued under section 255N to be cancelled and requiring a person to deliver up a cancelled certificate. If the certificate is not given up then this clause introduces an offence where the fine upon conviction will not exceed level 4 on the standard scale (currently £2500).

*Section 255P – Third parties' rights against insurers*

34. This new section provides that a person who is entitled to recover costs from a shipowner under section 255G has the right of direct action against that shipowner's wreck removal insurers.
35. The insurers are allowed to limit their liability in the same manner and extent as that of the shipowner, and claim defences which would be available to the shipowner. In addition the insurers may limit liability where the shipowner is not entitled to limit his liability under the International Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 and the 1996 Protocol (i.e. where the loss resulted from the shipowner's personal act or omission, committed with the intent to cause such loss, or recklessly and with the knowledge that such loss would probably result).
36. The insurers also have an additional defence if the incident was due to the wilful misconduct of the shipowner.
37. Similar provisions are contained in section 165 of the Act in relation to the International Convention on Civil Liability for Oil Pollution Damage 1992.

*Section 255Q – Electronic certificates*

38. This new section allows, under Article 12(13) of the ICRW, for the use of electronic insurance certificates, which would mean ships not being required to have an actual certificate of insurance when entering or leaving a port or arriving or leaving an offshore facility, if the Secretary of State has informed the Secretary-General of the International Maritime Organisation that the United Kingdom maintains records in an electronic format, accessible to all state parties, attesting to the existence of the certificate.
39. Should the Secretary of State decide at some time to allow electronic certificates then appropriate changes to Part 9A inserted by this Bill may be made by order, subject to the affirmative resolution procedure.

*Section 255R – Interpretation*

40. This new section provides that the expressions used in Part 9A are to be construed in accordance with Article 1 of the ICRW, which contains the ICRW's definitions. It adds the further definitions necessary for the purpose of Part 9A (definitions of "accident", "insurer", "wreck removal insurance", "wreck removal insurance certificate", "wreck removal notice", "the Wrecks Convention" and "Wrecks Convention State").
41. It requires the Secretary of State to take into account the matters in Article 6 of the Convention when determining whether a wreck is a hazard.
42. The Secretary of State is also required to make an order describing the United Kingdom's Convention area. The ICRW provides in Article 1 that that area is to be the Exclusive Economic Zone (EEZ) as established in accordance with international law, but if such a zone does not exist, a Party State may declare a zone of equivalent size. The United Kingdom does not yet have an EEZ but if one is designated in accordance with section 41 of the Marine and Coastal Access Act 2009 before the provisions come into force, that will be the Convention area. Otherwise it is proposed to declare a Convention area based on the Pollution Control Zone which is prescribed by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996 (S.I.1996/2128)). It is also proposed that the United Kingdom's Convention area should include the United Kingdom's territory and territorial sea, in exercise of the option in the ICRW.

*Section 255S – Government ships*

43. This new section provides for the extent to which the new Part 9A applies to ships used by states. Warships and ships being used by a state for non-commercial purposes only will be excluded from the clauses under Part 9A, unless a state notifies the Secretary-General of the IMO that the ICRW is to apply (article 4 paragraph 3). The offence of not having insurance in section 255K does not apply to an 'exempt ship', which must have a certificate showing that it is owned by the state and that the insurance liabilities will be met. A company registered in a state as the operator of a ship owned by the state is treated as the registered owner under Part 9A.

*Section 255T – Power to amend*

44. This new section provides an order making power under which the Secretary of State may amend Part 9A if the ICRW is amended. Orders made under this power are to be subject to affirmative resolution procedure as they involve amendment of primary legislation.

**Clause 2 Short title and commencement**

45. This clause provides that the short title of the Bill is the Wreck Removal Convention Act 2011 and also provides for the commencement of the Act by an order made by the Secretary of State.

**The Schedule**

46. The Schedule sets out new Schedule 11ZA to the Merchant Shipping Act 1995. It contains the full text of the Wreck Removal Convention.

**TERRITORIAL EXTENT AND APPLICATION**

47. The Bill, which does not contain any provisions falling within the terms of the Sewel Convention, will extend to England and Wales, Scotland and Northern Ireland. If necessary the Bill's provisions may be later extended to United Kingdom's Crown Dependencies or Overseas Territories by an Order made under section 315 of the Merchant Shipping Act 1995.

**FINANCIAL EFFECTS AND EFFECTS OF THE BILL ON PUBLIC SECTOR  
MANPOWER**

48. In the United Kingdom, bodies such as local authorities, the MCA (the Maritime and Coastguard Agency, an executive agency of the Department for Transport), General Lighthouse Authorities, Harbour and Conservancy Authorities are currently involved in responding to wreck incidents. These bodies bear, initially, all of the costs associated with the locating, marking and removal of wrecks. Cost recovery varies from zero to full recovery, with an average of 70% of costs recovered.
49. The Bill would give legal force to the provisions of the Convention and put the responsibility for the removal of a wreck with the shipowner. The shipowner would be required to follow written directions from the State for the removal of the wreck. Failure to follow this direction, or where the hazard posed by the wreck is particularly severe, would allow the UK authorities to remove the wreck and obtain reimbursement from the shipowner and the insurance company.
50. Implementation of the Convention would make it easier for authorities in the affected state to recover from the shipowner or their insurers the costs associated with the locating, marking and removal of a wreck. It is expected that the cost benefit to the state would be positive.
51. The MCA would be responsible for the issue and inspection of State Certificates verifying that adequate insurance is in place. The MCA would charge for the issue of certificates to cover administration and at 2011 prices this is expected to be £16. The

inspection regime would be part of the current Port State Control role they undertake and would not be an additional manpower burden.

#### **SUMMARY OF IMPACT ASSESSMENT**

52. An Impact Assessment has been published on the Department for Transport website, at [www.dft.gov.uk/pgr/shippingports/shipping](http://www.dft.gov.uk/pgr/shippingports/shipping). The sectors which may incur costs under this legislation are the registered shipowners and shipping companies. However compliance costs will be insignificant compared with the potential benefits to the taxpayers of the United Kingdom.
53. The Bill will produce significant non-monetarised benefits in safety improvements, both in harbours and at sea, which in turn will potentially lead to the avoidance of accidents and benefits in dealing with their aftermath both financially and environmentally.

#### **COMMENCEMENT**

54. The provisions in the Bill will be brought into force by Order made by the Secretary of State. It is anticipated that will be when the Convention comes into force.

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