



# Wreck Removal Convention Act 2011

## 2011 CHAPTER 8

### 1 Wreck Removal Convention

- (1) The Merchant Shipping Act 1995 is amended as follows.
- (2) After section 255 insert—

#### “PART 9A

#### WRECK REMOVAL CONVENTION

##### *Preliminary*

#### **255A “The Wrecks Convention”**

- (1) In this Part—
  - (a) “the Wrecks Convention” means the Nairobi International Convention on the Removal of Wrecks 2007 done in Nairobi on 18 May 2007, and
  - (b) “Wrecks Convention State” means a State which is a party to the Wrecks Convention.
- (2) The text of the Wrecks Convention is set out in Schedule 11ZA.

##### *Reporting, marking and removing*

#### **255B Wreck reports**

- (1) Where an accident results in a wreck in a Convention area, the persons responsible for any United Kingdom ship involved in the accident must report the wreck without delay.

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*Changes to legislation: There are currently no known outstanding effects for the Wreck Removal Convention Act 2011, Section 1. (See end of Document for details)*

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- (2) If the wreck is in the United Kingdom's Convention area, it must be reported to the Secretary of State.
- (3) If the wreck is in the Convention area of any other State, it must be reported to the government of that State.
- (4) The following are responsible for a ship—
  - (a) the master of the ship, and
  - (b) the operator of the ship.
- (5) A report under subsection (1) must include the information mentioned in paragraph (2) of Article 5 of the Wrecks Convention (so far as it is known).
- (6) If one of the persons responsible for a ship makes a report under subsection (1) the others are no longer under a duty to make a report.
- (7) Failure to comply with the reporting requirement is an offence.
- (8) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to a fine.

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

- (1) This section applies where an accident results in a wreck in the United Kingdom's Convention area.
- (2) The Secretary of State must ensure that the United Kingdom complies with its obligations under Articles 7 and 8 of the Wrecks Convention (locating and marking of wrecks).
- (3) The Secretary of State may, for those purposes, direct any of the following to take specified steps in relation to the wreck if it is within their area—
  - (a) a general lighthouse authority;
  - (b) a harbour authority;
  - (c) a conservancy authority.
- (4) A direction may require an authority to exercise or not to exercise a power under section 252 or 253 within their area.
- (5) For the purposes of subsections (3) and (4) (and, in a case where a direction is given, section 253), a general lighthouse authority's area includes any area that—
  - (a) is adjacent to the area specified in relation to the authority under section 193(1), and
  - (b) is within the United Kingdom's Convention area.
- (6) A direction—
  - (a) must be in writing, or
  - (b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.
- (7) An authority to whom a direction is given must comply with it.

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### **255D Removal by registered owner**

- (1) This section applies where—
  - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area, and
  - (b) the Secretary of State has determined that the wreck poses a hazard.
- (2) The Secretary of State must take all reasonable steps to give a notice (a “wreck removal notice”) requiring the registered owner to comply with the obligations imposed on registered owners by paragraph 2 and 3 of Article 9 of the Wrecks Convention (removal of wrecks and production of evidence of insurance).
- (3) The notice must be in writing and must—
  - (a) specify the deadline set under paragraph 6(a) of that Article for the removal of the wreck, and
  - (b) inform the registered owner of the other matters set out in paragraph 6(b) and (c) of that Article.
- (4) A registered owner who fails, without reasonable excuse, to comply with a notice by the specified deadline is guilty of an offence.
- (5) A registered owner guilty of the offence is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to a fine.

### **255E Imposition of conditions about removal**

- (1) This section applies if the Secretary of State has given a registered owner a wreck removal notice.
- (2) The Secretary of State may impose conditions as to the removal of the wreck in accordance with paragraph 4 of Article 9 of the Wrecks Convention.
- (3) A condition is imposed by giving notice of it to the registered owner.
- (4) A registered owner who fails, without reasonable excuse, to comply with a condition is guilty of an offence.
- (5) A registered owner guilty of the offence is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to a fine.

### **255F Removal in default**

- (1) The Secretary of State may remove a wreck in the United Kingdom's Convention area in the circumstances set out in paragraph 7 or 8 of Article 9 of the Wrecks Convention.
- (2) The Secretary of State may, instead of exercising the power under subsection (1), direct that the power be exercised by any of the following—
  - (a) a general lighthouse authority;

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- (b) a harbour authority;
  - (c) a conservancy authority.
- (3) A direction may be given to an authority only in relation to a wreck within the authority's area.
- (4) Section 255C(5) applies for the purposes of determining a general lighthouse authority's area.
- (5) A direction—
- (a) must be in writing, or
  - (b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.
- (6) An authority to whom a direction is given must comply with it.

### **255G Liability for costs**

- (1) This section applies where—
- (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area, and
  - (b) costs have been incurred complying with section 255C or 255F (locating and marking and removal of wrecks).
- (2) The person who incurred the costs is entitled to recover them from the ship's registered owner unless the owner proves that an exception set out in paragraph 1(a), (b) or (c) of Article 10 of the Wrecks Convention applies.
- (3) The owner is not liable for costs under this section if or to the extent that liability would conflict with—
- (a) a convention listed in paragraph 1 of Article 11 of the Wrecks Convention (exceptions to liability),
  - (b) an enactment implementing such a convention, or
  - (c) any other provision specified by order made by the Secretary of State.
- (4) Where the registered owner of each of two or more ships is liable for costs under this section but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.
- (5) This section does not prevent the exercise of the right (if any) to limit liability by virtue of section 185.
- (6) An order under subsection (3)(c) may be made only if a draft has been laid before and approved by resolution of each House of Parliament.
- (7) An order may include incidental, supplemental or transitional provision.

### **255H Limitation period**

An action to recover costs under section 255G may not be brought after the end of whichever of the following ends earlier—

- (a) the period of 3 years beginning with the date on which a wreck removal notice was given in respect of the wreck, and

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- (b) the period of 6 years beginning with the date of the accident which resulted in the wreck.

### **255I Expenses of general lighthouse authorities**

Costs incurred by a general lighthouse authority in complying with a direction under section 255C or 255F shall be paid out of the General Lighthouse Fund if or to the extent that they are not recovered under section 255G; but section 213 shall apply as if they were expenses of the authority falling within subsection (1) of that section other than establishment expenses.

## *Insurance*

### **255J Wreck removal insurance**

- (1) This section applies to ships with a gross tonnage of 300 or more.
- (2) A United Kingdom ship may not enter or leave a port in the United Kingdom or elsewhere unless—
  - (a) the ship has wreck removal insurance, and
  - (b) the Secretary of State has certified that it has wreck removal insurance.
- (3) A foreign ship may not enter or leave a port in the United Kingdom unless—
  - (a) the ship has wreck removal insurance, and
  - (b) there is a certificate confirming that it has wreck removal insurance.
- (4) For a ship registered in a foreign Wrecks Convention State the certificate must be one that has been issued by or under the authority of the government of that State.
- (5) For a foreign ship registered in any other State the certificate must be one that has been issued—
  - (a) by the Secretary of State, or
  - (b) by or under the authority of the government of a Wrecks Convention State.
- (6) For the purposes of subsection (1) the gross tonnage of a ship is to be calculated in the manner prescribed by order under paragraph 5(2) of Part II of Schedule 7.
- (7) In this Part—
  - “wreck removal insurance” means a contract of insurance or other security satisfying the requirements of Article 12 of the Wrecks Convention, and “insurer” means the person providing the insurance or other security, and
  - “wreck removal insurance certificate” means a certificate required by subsection (2)(b) or (3)(b).

### **255K Failure to insure**

- (1) The master and operator of a ship are each guilty of an offence if—

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- (a) the ship enters or leaves a port in contravention of section 255J, or
  - (b) anyone attempts to navigate the ship into or out of a port in contravention of that section.
- (2) A person guilty of the offence is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to a fine.

### **255L Detention of ships**

A ship may be detained if anyone attempts to navigate it out of a port in contravention of section 255J.

### **255M Production of certificates**

- (1) This section applies to a ship which is required to have a wreck removal insurance certificate before entering or leaving a port.
- (2) The master of the ship must ensure that the certificate is carried on board.
- (3) The master of the ship must, on request, produce the certificate to—
  - (a) an officer of Revenue and Customs;
  - (b) an officer of the Secretary of State;
  - (c) if the ship is a United Kingdom ship, a proper officer.
- (4) Failure to comply with subsection (2) or (3) is an offence.
- (5) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **255N Issue of certificates**

- (1) This section applies where the registered owner applies to the Secretary of State for a wreck removal insurance certificate in respect of—
  - (a) a United Kingdom ship, or
  - (b) a foreign ship registered in a State other than a Wrecks Convention State.
- (2) In relation to a United Kingdom ship, the Secretary of State must issue the certificate if satisfied—
  - (a) that the ship has wreck removal insurance in place for the period to which the certificate will relate, and
  - (b) that the obligations of the person providing the wreck removal insurance will be met.
- (3) In relation to a foreign ship registered in a State other than a Wrecks Convention State, the Secretary of State may issue the certificate if satisfied of the matters in paragraphs (a) and (b) of subsection (2).
- (4) The Secretary of State must send a copy of a certificate issued in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen.
- (5) The Registrar must make such certificates available for public inspection.

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### **255O Cancellation of certificates**

- (1) The Secretary of State may make regulations about the cancellation and delivery up of wreck removal insurance certificates issued under section 255N.
- (2) A person who fails to deliver up a certificate in accordance with the regulations is guilty of an offence.
- (3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **255P Third parties' rights against insurers**

- (1) This section applies where—
  - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the United Kingdom's Convention area,
  - (b) at the time of the accident the ship had wreck removal insurance, and
  - (c) there is a wreck removal insurance certificate in relation to the insurance.
- (2) A person who is entitled to recover costs from the ship's registered owner under section 255G may recover them from the insurer.
- (3) It is a defence for the insurer to prove that the accident was caused by the wilful misconduct of the ship's registered owner.
- (4) The insurer may also rely on any defences available to the registered owner (including section 255H).
- (5) The insurer may limit liability in respect of claims made under this section to the same extent as the registered owner may limit liability by virtue of section 185 (or would be able to limit liability by virtue of that section if it were not for paragraph 3 of Part 2 of Schedule 7).
- (6) But an insurer may limit liability whether or not the accident is caused by an act or omission mentioned in Article 4 of the Convention set out in Part 1 of Schedule 7.
- (7) The following do not apply in relation to any wreck removal insurance to which a wreck removal insurance certificate relates—
  - (a) the Third Parties (Rights against Insurers) Act 1930;
  - (b) the Third Parties (Rights against Insurers) (Northern Ireland) Act 1930;
  - (c) the Third Parties (Rights against Insurers) Act 2010.

### **255Q Electronic certificates**

- (1) This section applies if the Secretary of State has given, or proposes to give, notice under paragraph 13 of Article 12 of the Wrecks Convention (electronic insurance certificates, &c.).

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- (2) The Secretary of State may by order make such amendments of this Part as the Secretary of State thinks necessary or expedient for giving effect to the notice.
- (3) An order may be made only if a draft has been laid before and approved by resolution of each House of Parliament.
- (4) An order may include incidental, supplemental or transitional provision.

### *Supplemental*

#### **255R Interpretation etc.**

- (1) Expressions used in this Part shall be construed in accordance with Article 1 of the Wrecks Convention.
- (2) In this Part—
  - “accident” means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or in an imminent threat of material damage to a ship or its cargo,
  - “insurer” shall be construed in accordance with section 255J(7),
  - “wreck removal insurance” has the meaning given by section 255J(7),
  - “wreck removal insurance certificate” has the meaning given by section 255J(7),
  - “wreck removal notice” means a notice under section 255D,
  - “the Wrecks Convention” has the meaning given by section 255A(1), and
  - “Wrecks Convention State” has the meaning given by section 255A(1).
- (3) References in this Part to entering or leaving a port in a State include references to arriving at or leaving an offshore facility in the territorial sea of that State (except in section 255L).
- (4) References in this Part to ships registered in a State include unregistered ships entitled to fly the flag of that State.
- (5) In determining for the purposes of this Part whether a wreck poses a hazard the Secretary of State must take into account the matters set out in Article 6 of the Wrecks Convention (determination of hazard).
- (6) The Secretary of State shall from time to time by order describe the United Kingdom's Convention area.
- (7) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Wrecks Convention, the Order shall, while in force, be conclusive evidence of that fact.

#### **255S Government ships**

- (1) This Part does not apply in relation to warships or ships for the time being used by a State for non-commercial purposes only.



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- (2) But it does apply to such ships if specified in a notice under paragraph 3 of Article 4 of the Wrecks Convention.
- (3) Section 255K does not apply to a ship (an “exempt ship”) that is owned by a Wrecks Convention State.
- (4) An exempt ship must have a certificate issued by the government of the State concerned and stating—
  - (a) that the ship is owned by that State, and
  - (b) that any liability under section 255G will be met up to the limits prescribed by paragraph 1 of Article 12 of the Wrecks Convention (compulsory insurance).
- (5) Section 255M(2) to (5) applies to such a certificate.
- (6) Where a ship is owned by a State and operated by a company which is registered in that State as operator of the ship, references in this Part to the registered owner are references to that company.
- (7) In proceedings against a Wrecks Convention State for the recovery of costs under section 255G the State shall be treated as having submitted to the jurisdiction of the court in which the proceedings are brought; but this does not authorise execution, or in Scotland the execution of diligence, against the property of a State.

### **255T Saving**

Nothing in this Part affects any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against any other person in respect of that liability.

### **255U Power to amend**

- (1) The Secretary of State may by order amend this Part to reflect any amendment of the Wrecks Convention.
- (2) An order under this section may be made only if a draft has been laid before and approved by resolution of each House of Parliament.”
- (3) In section 306(2A)(c) (orders not subject to annulment), after “223(3)” insert “255G(3)(c), 255Q(2), 255U(1)”.
- (4) After Schedule 11 insert the Schedule set out in the Schedule to this Act.
- (5) In section 315(2) to (5) (power to extend Act to relevant British possessions) a reference to the Merchant Shipping Act 1995 includes a reference to that Act as amended by this Act.

#### **Commencement Information**

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| <b>I1</b> | S. 1(1)(3)(5) in force at 14.4.2015 by <a href="#">S.I. 2015/133</a> , <a href="#">art. 3</a>                                |
| <b>I2</b> | S. 1(2)(4) in force at 5.2.2015 for specified purposes by <a href="#">S.I. 2015/133</a> , <a href="#">art. 2</a>             |
| <b>I3</b> | S. 1(2)(4) in force at 14.4.2015 in so far as not already in force by <a href="#">S.I. 2015/133</a> , <a href="#">art. 3</a> |

**Changes to legislation:**

There are currently no known outstanding effects for the Wreck Removal Convention Act 2011, Section 1.