

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

EXTENSION OF WRECK REMOVAL CONVENTION TO THE BAILIWICK

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 23 November 2016 entitled Extension of Wreck Removal Convention to the Bailiwick, they are of the opinion:-

1. To approve the preparation of one or more Ordinances made under section 289, 290, 296 and any other relevant provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the Merchant Shipping Law") to –
 - (i) amend the Merchant Shipping Law to give effect within the Bailiwick and its territorial waters to the Nairobi International Convention on the Removal of Wrecks 2007, and
 - (ii) effect any corresponding or necessary repeals and amendments (including but not limited to amendments to the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986), and any other consequential and incidental legislative provision.

The above Propositions have been submitted to Her Majesty's Procurer for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
The States of Deliberation
The Royal Court House
St Peter Port

23rd November 2016

Dear Sir

1. Executive Summary

- 1.1 The Committee *for the* Environment & Infrastructure ("the Committee") wishes to have the Nairobi International Convention on the Removal of Wrecks 2007 ("the Convention") extended to the Bailiwick, and is requesting the States to approve the preparation of the legislation necessary to give domestic effect to it. The Convention, to which the UK has acceded, entered into force internationally in April 2015. It has the effect of making shipowners financially liable in respect of wrecks, and of requiring owners of larger vessels to take out insurance to cover the costs of wreck removal. Implementation would thus reduce the States' potential financial exposure in respect of one type of maritime risk.
- 1.2 The text of the Convention is available online at the UK government website, www.gov.uk¹. The UK has strongly recommended that the Crown Dependencies and Overseas Territories seek extension of the Convention to their jurisdictions, because of the financial protection it offers.
- 1.3 This Policy Letter is not concerned with historic wrecks, in respect of which the Committee has no wish to alter the current position.

¹ <https://www.gov.uk/government/publications/the-nairobi-international-convention-on-the-removal-of-wrecks>

- 1.4 The Policy & Resources Committee, which has responsibility in respect of international Conventions, supports the extension of the Convention.

2. The Convention

Background

- 2.1 The International Maritime Organisation summarises the purpose and effect of the Convention on its website in these terms:

“The Nairobi International Convention on the Removal of Wrecks, 2007, was adopted by an international conference held in Kenya in 2007. The Convention will provide the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment.

[...]

Although the incidence of marine casualties has decreased dramatically in recent years, mainly thanks to the work of IMO and the persistent efforts of Governments and industry to enhance safety in shipping operations, the number of abandoned wrecks, estimated at almost thirteen hundred worldwide, has reportedly increased and, as a result, the problems they cause to coastal States and shipping in general have, if anything, become more acute.

These problems are three-fold: first, and depending on its location, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews; second, and of equal concern, depending on the nature of the cargo, is the potential for a wreck to cause substantial damage to the marine and coastal environments; and third, in an age where goods and services are becoming increasingly expensive, is the issue of the costs involved in the marking and removal of hazardous wrecks. The Convention attempts to resolve all of these and other, related, issues.

The Convention provides a sound legal basis for coastal States to remove, or have removed, from their coastlines, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments, or both. It will make shipowners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide States with a right of direct action against insurers.”

- 2.2 There is already local legislation in force in the Bailiwick governing wrecks and salvage, in the form of the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986 ("the 1986 Law") as amended by the Salvage Convention (Bailiwick of Guernsey) Law, 1997. This legislation empowers the Receiver of Wreck to take steps *inter alia* to make wreck safe and, if necessary, to remove it,

and in certain circumstances to attempt to recover those costs from the sale of the vessel and cargo. However, the current provisions do not require any shipowners to have wreck removal insurance, and do not empower the States to recover the costs of wreck removal (if an owner fails to remove a wreck) directly from the owner/his insurer, in circumstances where those costs may dwarf the quantum of monies that might be recoverable from any subsequent sale.

- 2.3 Implementation of the Convention in the Bailiwick would mean that any vessel over 300 gross tons in our territorial waters would be required to have wreck removal insurance. If a vessel in our waters were to be wrecked, the owner or master would have to report it locally. If it was a hazard, the States would be required to locate and mark it (as would happen now to ensure the safety of navigation), and the owner, on being served with a notice, to remove it; if the owner did not, the States could recover the cost of removing it from him/his insurer. The costs of locating and marking the wreck would also be recoverable. It should be noted that the power to recover costs in the Convention is, as would be expected, subject to certain exceptions: *force majeure* for example (where the owner can prove that the wreck resulted from "a natural phenomenon of an exceptional, inevitable and irresistible character"), and where the wreck was "wholly caused" by an act or omission done with intent to cause damage by a third party.
- 2.4 Now that the Convention has come into force internationally, the owner or master of a Guernsey-registered vessel wrecked in an implementing State's Convention area is under a duty to report the wreck to that State and, as previously described, the owner could be liable to pay the costs of locating, marking and removing the wreck. However, no owner of a Guernsey-registered vessel is required to take out wreck removal insurance, as Guernsey does not currently register vessels of a size of 300 gross tons.

Implementation in domestic law

- 2.5 The Part of the Merchant Shipping Law (Part IX) that deals with wreck and salvage is not currently in force. To a significant extent, it replicates the effect of the 1986 Law (as amended), though it makes no provision in relation to historic wreck, in respect of which see below, and also differs from the current provisions in administrative terms by, *inter alia*, providing for the appointment of one or more receivers of wreck, rather than for one person to be appointed to the office of Receiver of Wreck.
- 2.6 The Committee intends to implement the Convention by inserting new provisions into the Merchant Shipping Law to give it effect. So that the more modern provisions in this area are in force, and the relevant provisions are in the same place, it also proposes that most of Part IX of the Merchant Shipping Law

should be brought into force, which will necessitate the repeal of most of the 1986 Law (as amended).

- 2.7 The 1986 Law makes discrete provision in relation to historic wreck². There is a rich legacy of historic wreck in Bailiwick waters, and the Committee has no wish to alter the position in respect of this type of wreck, which is different from other forms of wreck and which requires different treatment and protections. As such, it is expected that Part 3 of the 1986 Law, which is concerned with historic wreck, will be left in force, together with any necessary supporting provisions. However, some minor consequential amendments to Part 3 and those provisions may be required, and the precise extent of the repeals and modifications of other legislation arising from the amendments and commencement described above, together with the precise form of the main implementing legislation, will be a matter of judgement for the Law Officers in the course of the preparation of the legislation.
- 2.8 The 1986 Law applies to aircraft as it does to marine vessels. There is no wish to change the position as regards aircraft, and the legislation shall provide that the 1986 Law remain in force as regards aircraft (subject to any necessary minor consequential amendments).
- 2.9 It is proposed to effect the required legislative changes, comprising amendments to and repeals of primary legislation (Laws), by Ordinance. This is made possible by virtue of section 290 of the Merchant Shipping Law (Power to modify by Ordinance), in light of the fact that the proposed amendments would make similar provision in respect of these issues as apply in the United Kingdom through amendments made to the Merchant Shipping Act 1995 to give effect to the Convention; and section 296 (Repeals, consequential amendments and transitional provisions), which expressly allows the States to amend or repeal any provision of the 1986 Law (as amended) by Ordinance. The provisions of section 289 (General provisions as to subordinate legislation) are also relevant in this regard.

3. Consultation

- 3.1 The relevant authorities in Alderney and Sark have been consulted in relation to these matters and can confirm that both jurisdictions support the extension of the Convention and the implementation of the requisite domestic legislation. The Director of Civil Aviation has been consulted and has no objections to the proposals.

² The term "historic wreck" is defined at section 15 of the 1986 Law, and refers to a vessel (or cargo or other object) that has lain wrecked (or lost or abandoned) for 50 years or more in local waters.

3.2 Commercial operators and agents whose vessels transit Bailiwick waters have also been consulted. Two responses to the consultation were received, from companies confirming that they already had relevant insurance in place.

3.3 The Law Officers of the Crown have been consulted and assisted with preparation of this Policy Letter. They are of the view that the recommended legislative measures will enable effective implementation of the Convention in the Bailiwick.

4. Cost/Resources

4.1 These proposals would not lead to any increase in public expenditure, nor would they have any other significant impact on the public sector.

5. Propositions

5.1 The States are asked to decide whether they are of the opinion to:

- (a) Approve the preparation of one or more Ordinances made under section 289, 290, 296 and any other relevant provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the Merchant Shipping Law") to –
 - (i) amend the Merchant Shipping Law to give effect within the Bailiwick and its territorial waters to the Nairobi International Convention on the Removal of Wrecks 2007, and
 - (ii) effect any corresponding or necessary repeals and amendments (including but not limited to amendments to the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986), and any other consequential and incidental legislative provision.

6. Committee Support for Propositions

6.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

B L Brehaut
President

M H Dorey
Vice-President

H L de Sausmarez
S T Hansmann Rouxel

S L Langlois