

Department for
Transport

**Consultation on UK Implementation of
the Agreement for the protection of the
wreck of the RMS *Titanic***

7 APRIL 2003

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1. The Issue

1.1 Making a statutory instrument under Section 24 of the Merchant Shipping and Maritime Security Act 1997 (the 1997 Act), to give effect in the UK to the international Agreement on the wreck of the RMS *Titanic*.

2. Background

2.1 Over the past 6 years officials from the Department of Transport (DfT), the Department for Culture, Media and Sport (DCMS), and the Foreign and Commonwealth Office (FCO) have been working with representatives from Canada, France and the US on negotiating an Agreement on the protection of the wreck of the RMS *Titanic*. These four States have the greatest interest in the wreck. RMS *Titanic* flew the British flag. She sailed from Southampton via Cherbourg in France and Queenstown (now Cobh) in Ireland. The wreck lies in international waters 325 miles off the coast of Newfoundland, Canada, in the Atlantic Ocean.

2.2 The Agreement has now been finalised and will soon be open for signature. Negotiations for an international agreement for the protection of the RMS *Titanic* were undertaken in the awareness that, since its discovery, the wreck has been the subject of a number of explorations. Delegations involved in the negotiations recognised RMS *Titanic* as a memorial to those who perished and its unique historic significance, symbolic value and international interest. There was also concern that further unregulated dives would risk disturbing human remains, and the integrity of the wreck and its remaining artefacts. Subsequently, an international agreement was deemed necessary to protect RMS *Titanic*.

2.3 Although the RMS *Titanic* sank in 1912, technological developments have only recently made dives on the wreck practicable. RMS Titanic Inc. (a US company) has carried out dives on the wreck with the assistance of The French Research Institute for the Exploitation of the Sea. Since then, the wreck has enjoyed a degree of protection under US federal law. The company RMS Titanic Inc. has "salvor in possession" status. This means that they are, according to US law, the only company legally entitled to recover artefacts from the wreck site. This situation could, of course, change.

2.4 The objective of the Agreement is to protect RMS *Titanic* and ensure that further exploration would be undertaken in accordance with the international rules that form an integral part of the Agreement. These Rules, annexed to the Agreement, derive from the charter on the protection and management of underwater cultural heritage adopted by the international council of monuments and sites (ICOMOS). ICOMOS is an international non-governmental organisation dedicated to the conservation of the world's historic monuments and sites. The rules reflect best practice for underwater archaeology.

2.5 The Agreement and these Rules establish *in situ* preservation as the preferred policy for the preservation of RMS *Titanic* and its associated artefacts.

2.6 Generally, the effect of the Agreement is to regulate dives on the wreck through a system of project authorisations, in accordance with the Rules concerning activities aimed at:

- (a) entry into the hull sections of RMS *Titanic*;

- (b) the artefacts from RMS *Titanic* found outside the hull of the wreck.

2.7 The Agreement would provide a clearer and more effective framework to protect the wreck. It would enable the participating governments to decide whether intrusive dives should take place. Whilst recognising that the preferred policy for the preservation of the RMS *Titanic* and its artefacts is *in situ* preservation the Rules require any persons undertaking activities to:

- (a) ensure proper recording and dissemination to the public of historical, cultural and archaeological information;
- (b) include a project design that provides a contingency plan that will ensure conservation of recovered artefacts and supporting documentation in the event of any interruption of anticipated funding, and
- (c) be qualified and have demonstrated experience appropriate to their project roles.

2.8 The Agreement shall enter into force on the date on which two States have indicated their consent to be bound by the Agreement. Consultations are being undertaken with representatives from the Canadian, French and US administrations in order to determine their intentions on signing the Agreement.

2.9 The text of the Agreement is contained in Annex A to this correspondence, the draft implementing Order in Council is contained in Annex B, and the distribution list in Annex C.

3. Legislative Background

3.1 The enabling legislative power to implement the Titanic Agreement, through an Order in Council, is contained in Section 24 of the 1997 Merchant Shipping and Maritime Security Act (the 1997 Act). In August 1996 the Department issued a consultation document on the legislative provisions contained in the proposed 1997 Act and referred to the discussions that were taking place at the time on the appropriate statutory protection that should be given to wrecks of merchant ships such as the RMS *Titanic* which are on the high seas and represent a grave of important historic significance. This also related to statutory protection of other maritime graves and, subsequently, in 1999 under this power the UK implemented and became party to the Agreement on the protection of the wreck of the M/V *Estonia* (SI 1999/856). Like the Agreement on the wreck of the RMS *Titanic*, this recognises the wreck as the final resting-place of those who died.

3.2 The two main Acts relating to UK law on wrecks are the Merchant Shipping Act (MSA) 1995 and the Protection of Wrecks Act 1973. The MSA 1995 deals with wreck and salvage and includes provision about the reporting of wreck finds to the Receiver of Wreck, and powers for the Receiver to dispose of finds. The Protection of Wrecks Act 1973 provides for the protection of historic or dangerous wrecks and wreck sites.

3.3 However, the designation and protection of historic wrecks under the Protection of Wrecks Act 1973 only applies to sites in UK waters, and not UK flagged vessels in international waters, hence the need for a negotiated international agreement under Section 24 of the 1997 Act. Section 24 does not conflict with the Protection of Wrecks Act 1973 (or even the Protection of Military Remains Act 1986)

as it is restricted to dealing with wrecks of merchant ships which are not war graves and which are located beyond territorial waters.

4. Risk Assessment

4.1 There is a risk, if the UK does not sign the Agreement on the wreck of the RMS *Titanic*, of intrusive, unregulated dives on the site of the wreck involving UK ships, by UK companies or by British nationals or other persons who owe allegiance to the UK. Such dives risk disturbing the remains of those for whom the RMS *Titanic* is the final resting place.

4.2 Since its discovery, the wreck has been the subject of a number of explorations and over 6000 artefacts have been recovered from the wreck site. A number of these artefacts have been sold as private collections, or to private owners, which has been a source of concern for those who regard the wreck of the RMS *Titanic* as the final resting place of those who died and as an historical wreck of exceptional international importance, with a symbolic value.

4.3 Each State can only regulate its territory, ships, nationals, or companies. However, if all of the negotiating States become party to the Agreement this would greatly enhance the effectiveness of the Agreement.

5. Options

Option 1 – Do nothing

5.1 This would ensure that RMS *Titanic* continues to be open to intrusive, unauthorised, and unregulated expeditions by UK ships, by UK companies or by British nationals or other persons that owe allegiance to the UK. Whilst the Agreement would still be open for signature by other States, each State, as noted, can only regulate activities involving its territory, ships, nationals, or companies.

5.2 At present, RMS Titanic Inc. holds the exclusive salvage rights to the wreck of the *Titanic*, following an injunction obtained in a federal court in Virginia (US) in 1994 that protects their rights to the wreck under US law. This means that the company RMS *Titanic* Inc. has "salvor in possession" status and that they are legally entitled to recover artefacts from the wreck site. RMS Titanic Inc can enforce these rights against subsequent salvors, thereby providing some measure of protection against disturbance of the wreck, although it is arguable how much significance this has in UK law and outside the jurisdiction of the US. However, greater long term protection will be afforded by the Agreement.

Option 2: UK implementation and signature of the Agreement on the RMS Titanic

5.3 The RMS *Titanic* flew the British flag. She sailed from Southampton (via Cherbourg) and was built at the Haarland & Wolf shipyard in Belfast.

5.4 The preferred policy for the preservation of the RMS *Titanic* and its artefacts, according to the Rules of the Agreement, is *in situ* preservation. However, the Agreement does not prohibit any exploration of the wreck, but would ensure that any such dives are subject to a system of authorisations. Subsequently, project authorisation should only be granted by a State Party when justified by educational, scientific, or cultural interests, including the need to protect the integrity of the wreck

of RMS *Titanic* and/or its artefacts from significant threat (see Article 4 (2) of the Agreement).

5.5 UK implementation and signature of the Agreement will ensure that intrusive dives on the wreck by UK nationals or from UK vessels can only take place if licensed under the Order implementing the Agreement. It would, therefore, help to preserve the status of the RMS *Titanic* as a grave for so many dead and as a historical wreck of exceptional importance with symbolic value, as well as preserving its integrity of the historical record.

5.6 It would also ensure that the conservation and curation of artefacts reflects best practice for underwater archaeology and provides for public access and education.

5.7 The draft implementing Order provides the following measures, under Section 24 of the 1997 Act, in accordance with the provisions of the Agreement:

- a) access to the RMS *Titanic* is prohibited unless authorised by a licence from the Secretary of State, or authorisation from another State Party;
- b) access to the wreck by a non licence holder will be a prosecutable criminal offence (see para13.3.);
- c) power for the appropriate Secretary of State to issue a licence for entry into the hull sections of RMS *Titanic* and activities aimed at the artefacts outside the hull of the wreck;
- d) a licence holder is required to comply with the Rules annexed to the Agreement; and
- e) it will be an offence for licence holders to undertake action that is not in compliance with the Rules.

6. Business Sectors affected

6.1 UK industry representatives have, initially, reacted positively to UK signature of the Agreement. Initial, informal consultations with interested industry parties have indicated that their members are unlikely to have a significant interest in undertaking expeditions to the site of the wreck.

6.2 The measure would affect those UK shipowners, salvage firms and archaeologists who will be involved in expeditions to the wreck site. Whilst we are aware that an expedition, with possible UK connections, may have visited the site late last year with a view to undertaking a further visit, no previous dives on the wreck have no known link with the UK.

6.3 Furthermore, current UK legislation (Protection of Wrecks Act 1973) governing historic wreck and historic wreck sites in UK waters **already** imposes a system whereby a 'designated historic wreck site', may only be visited, and items may only be recovered, if a licence for that purpose has been granted by the appropriate Secretary of State. Such licences will usually only be granted on certain conditions, or with certain restrictions, including the provision of immediate conservation facilities.

6.4 Any authorised activities carried out from a signatory state will have to comply with the Rules Concerning Activities Aimed at the RMS *Titanic* and/or its artefacts. As noted in paragraph 2.4, these Rules are based on a set of existing regulations that are accepted as reflecting best practice for underwater archaeology.

6.5 Due to the depth (two and a half miles below the surface), and the subsequent conditions, at which the RMS *Titanic* is located, there are only a small number of States whose companies have the capacity to carry out dives on the wreck (including also Japan and Russia). If the four States involved in the negotiations of the Agreement proceed to signature, the aim would be to encourage those States whose companies do possess the necessary technology to become party to the Agreement. This will further enhance its effectiveness.

7. Benefits

7.1 The measure to give effect to the Agreement on the RMS *Titanic* in the UK will complete the original intention of providing the enabling power in Section 24 of the 1997 Act to give statutory protection to the wrecks of the RMS *Titanic* and the M/V *Estonia*, as maritime graves. It will also ensure that, through co-ordinated international action, such protection is both effective and appropriate, and reflects archaeological best practice in terms of the preferred policy as *in situ* preservation, and the conditions that apply to conservation and curation of artefacts recovered from RMS *Titanic*.

8. Compliance Costs

Effects on International and Domestic Competition

8.1 Any UK authorised expedition will, generally, be subject to the same conditions, and regulations, provided in the Agreement as any other dive authorised by a State bound by the Agreement. The Agreement requires that:

- a) any artefacts recovered from RMS *Titanic*, under its jurisdiction, are conserved and curated consistent with the Rules and are kept together and intact as project collections;
- b) each State Party shall inform the other Parties of the measures taken to implement the Agreement, and
- c) copies of requests for authorisations for new projects are provided to other State Parties for comment, with the intention of harmonising the regulation of the activities conducted by nationals, or vessels subject to the jurisdiction, of more than one State Party.

8.2 Unauthorised expeditions outside the jurisdiction of the Agreement will continue to be unregulated, although, as already noted, it is the intention of those States who negotiated the Agreement to make a joint approach to States whose companies have the necessary expertise, and technology, proposing signature of the Agreement to enhance its effectiveness.

9. Industry Costs

9.1 There should be no additional annual costs to the responsible parts of industry. The Rules Concerning Activities Aimed at the RMS *Titanic* and/or its

Artifacts are based on the *existing* ICOMOS Charter that already reflects best practice for underwater archaeology.

9.2 Further, these conditions and the system of project authorisations and licensing is similar to the process that already exists for the designation of historic wreck in UK waters, and licensing to visit and recover artefacts from such wrecks, under the Protection of Wrecks Act 1973 – see para 6.5.

9.3 The definition of 'Wreck' covers a wide range of property recovered from the sea (or washed up on the shore). There is an existing legal duty to report any wreck, whether historic or not, when it is **brought into UK waters**, to the UK Receiver of Wreck and, usually, conservation facilities are found to avoid the private acquisition of historic artefacts.

10. Competition Assessment

10.1 It is not expected that UK signature, and implementation of, the Agreement on the RMS *Titanic* will have implications for competition. Following initial informal consultations with industry it is unlikely that there will be a significant number of requests for project authorisations in the UK to undertake activities at the site of RMS *Titanic*.

11. Small Business Sector

11.1 It is unlikely that UK signature of the Agreement will have an effect on small businesses, or charities and voluntary organisations.

12. Consultations to date

12.1 Public consultation was previously undertaken on the enabling legislative power in the 1997 Merchant Shipping and Maritime Security Act (Section 24). This was included in the Act specifically to allow for UK implementation of the Agreement on the wreck of RMS *Titanic*, and other agreements relating to the protection of wrecks. There have already been initial, informal consultations with the UK Chamber of Shipping, the International Salvage Union, the Salvage Association who have provided *initial* views that their members are unlikely to be involved in any expeditions to the site of the wreck of RMS *Titanic*. Initial, informal consultation has also been undertaken with the Joint Nautical Archaeology Policy Committee (JNAPC).

13. Offences/Enforcement/Sanctions

13.1 The legislation implementing the Agreement will create offences. Some will relate to maritime operations, others to artefacts recovered from the wreck. Article 6(2) and (3) of the draft Order creates offences that can be committed in the UK relating to the conservation and curation of, public access to, artefacts recovered from the site of the wreck and reporting and publication of results. Article 6 (1) of the draft Order creates an offence for activities carried out at the site of the wreck itself, as outlined in Article 4 (1) and (2) of the draft Order.

13.2 The proposed implementing legislation only applies to offences committed in the UK, in UK territorial waters, on board UK ships, by UK companies or by British nationals or other persons that owe allegiance to the UK. Section 24(3) of the

Merchant Shipping and Maritime Security Act 1997 imposes this restriction in international law.

13.3 Offences committed within the scope of the draft Order under Article 6 (1), (2) and (3) are liable on summary conviction to a fine not exceeding the statutory maximum (£5, 000) or on conviction, in accordance with normal principles of indictment, to an unlimited fine.

13.4 Taking into account the historic significance of the RMS *Titanic*, it is possible that grounds for prosecution in the UK will arise under the Statutory Instrument implementing the Agreement in respect of the RMS *Titanic*.

13.5 If unauthorised dives on the wreck take place after entry into force of the Agreement, it is possible that those involved will wish to avoid any link with the Parties to the Agreement to avoid a risk of prosecution. This in turn may remove much of the financial incentive for such dives (particularly the possibility of selling artefacts in the USA, UK, Canada and France if these States proceed towards signature) and will ensure that it is more difficult to accomplish unauthorised dives from a technical point of view.

14. Address for comments

14.1 This document follows the Cabinet Office Code of Practice in written consultation. A shorter formal consultation period was allowed in view of the responses received during our initial conversation with interested parties.

14.2 General and detailed comments on the issues contained in this document and, generally, on UK signature of the Agreement on the RMS *Titanic* are invited-
before close of play on Thursday 24 April, 2003 and these should be sent to:

David Baker
Shipping Policy 1A, Department for Transport
Zone 2/28, Great Minster House
76 Marsham Street, London, SW1P 4DR

Tel: 0207 944 5124
Fax: 0207 944 2186
E-Mail: David.Baker@dft.gsi.gov.uk

14.3 Any complaints concerning this consultation ***should be made by Thursday 24 April 2003*** and addressed to:

Department for Transport
Complaint Officer
Delivery and Business Planning Division
4/12 Great Minster House
76 Marsham Street
LONDON SW1P 4DR

**AGREEMENT
CONCERNING THE SHIPWRECKED VESSEL RMS *TITANIC***

The States Parties to this Agreement,

Recalling the sinking of the British flag White Star Lines ocean liner RMS *Titanic* on her maiden voyage on April 15, 1912, in waters of the northwest Atlantic 325 miles southeast of Newfoundland, Canada, in which the lives of 1,523 of the 2,228 persons on board were lost;

Aware that since RMS *Titanic* was first located on the Canadian continental shelf in 1985 it has been the object of a number of subsequent explorations and that over 5,000 artifacts have been recovered;

Mindful that further dives, if not properly regulated, risk disturbing the remains of those for whom the RMS *Titanic* is their final resting place and the integrity of the wreck and its remaining artifacts;

Cognizant of the unique historic significance and symbolic value of, and international interest in, RMS *Titanic*;

Considering the relevant provisions of the 1982 UN Convention on the Law of the Sea, including Article 303 thereof;

Desiring that artifacts henceforth recovered from RMS *Titanic* be kept together and intact as project collections in a manner that can provide for public access and the curation of such project collections in perpetuity;

Seeking to ensure the protection of RMS *Titanic* and its artifacts for the benefit of present and future generations; and

Recognizing that *in situ* preservation is the most effective way to ensure such protection, unless otherwise justified by educational, scientific or cultural interests, including the need to protect the integrity of RMS *Titanic* and/or its artifacts from a significant threat;

HAVE AGREED as follows:

Article 1

For the purposes of this Agreement, unless the context otherwise requires,

- (a) "RMS *Titanic*" means the shipwrecked vessel RMS *Titanic*;
- (b) "Artifacts" means the cargo of RMS *Titanic* and other contents, including those associated objects that are scattered in its vicinity and any portion of the hull;
- (c) "Rules" means the Rules Concerning Activities Aimed at the RMS *Titanic* and/or its Artifacts contained in the Annex, which shall form an integral part of this Agreement; and
- (d) "Project" means all activities aimed at RMS *Titanic* and/or its artifacts carried out pursuant to an authorization provided in accordance with this Agreement.

Article 2

RMS *Titanic* shall be recognized as:

- (a) a memorial to those men, women and children who perished and whose remains should be given appropriate respect, in accordance with this Agreement; and
- (b) an underwater historical wreck of exceptional international importance having a unique symbolic value.

Article 3

Each Party shall take all reasonable measures to ensure that all artifacts recovered from RMS *Titanic* after entry into force of this Agreement, that are under its jurisdiction, are conserved and curated consistent with the relevant Rules and are kept together and intact as project collections.

