

Admiralty  
& Casualty

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## All washed up: Wreck on the beach

Recent dramatic and newsworthy pictures of the *MSC Napoli* deliberately put aground off the Devon coast on the orders of SOSREP (the Secretary of State's Representative), and the wreckage of cargo and containers subsequently washed up on the beach, have highlighted to the British public something of the nature and quantity of the everyday goods that are supplied to them by the ships that pass our coasts. The incident too seems, in some sections of the community at least, to have revived earlier traditions and urges for passers-by to help themselves to property in a way that they would not, one is inclined to think, if it had, say, floated out from flooded shops in a high street. At first, there seemed to be a general belief that such wreckage was fair game. This is perhaps surprising, if only because in this case the source of the goods was no mystery; it was clear that the nearby vessel would have documentary evidence of the ownership.

Although the law relating to the finding of wreck is not identical to that obtaining in respect of property apparently discarded inland, the basic principle that finders is not, necessarily, keepers still applies. Rights and duties in relation to wreck in the United Kingdom are regulated by the Receiver of Wreck under the general superintendence of the Secretary of State. The Receiver of Wreck is an ancient office, and his or her (the current Receiver is Ms Sophia Exelby) modern function and duties are set out, in relation to wreck, in section 248 etc of the Merchant Shipping Act 1995 ("the Act"). ss 231 to 255 cover many of the most important aspects of wreck.<sup>1</sup>

s. 236 requires the finder or importer of wreck in or into the United Kingdom to give notice to the Receiver, stating whether he is the owner and, if he is not the owner, to hold it to the Receiver's order (or deliver it to her). If the holder fails so to act, he will be liable to a fine, forfeits any right to salvage and may be liable to the owner for up to twice its value. The Receiver is entitled to seize wrongfully retained cargo, if necessary by force.<sup>2</sup> The Receiver in turn must notify Lloyd's in London if the value exceeds £5,000, and the owner has one year to claim his property on payment of salvage, fees and expenses. If the value is less than £5,000, or it is perishable, or worth less than its storage costs, the Receiver can sell it and hold the net proceeds.<sup>3</sup>

If the wreck remains unclaimed for a year, the Receiver must sell the wreck and from the proceeds, deduct her fees and expenses, together with the amount that the Secretary of State determines is payable to the salvors<sup>4</sup>, the balance being for the benefit of the Crown<sup>5</sup>.

### Penalties for interference with wreck

A five year prison term awaits those who without authority seek to export British wrecks<sup>6</sup>. s.246 makes it an offence to interfere with or loot a wreck or impede rescue attempts. A ship's master can forcibly repel anyone attempting to do so<sup>7</sup>. Presumably this latter provision is intended to concern only the protection from effective piracy of what might be called 'active wrecks', that is, those in course of occurring (such as the *MSC Napoli*) or that are otherwise very recent, and not old wrecks of long standing.

A person, such as a beachcomber, commits an offence subject to a fine of up to £2,500 if he conceals or carries away or removes any wreck or cargo<sup>8</sup>. The Receiver of Wreck can obtain a search warrant if she believes such an offence has been committed, and enter any house or other place in order to seize wreck<sup>9</sup>. Informers however are entitled to a reward of up to £100.

<sup>1</sup> 'Wreck' includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water. (s.255). Jetsam is goods thrown overboard to lighten a ship; flotsam is goods floating from a sunken ship and lagan (or ligan) is non-floating jetsam buoyed for subsequent recovery. Derelict is abandoned cargo, or ship, or parts thereof. There might thus, in this case, be an argument that the goods washed up on the beach are not wreck within the definition, since they have merely fallen off the ship and could be said not to have been abandoned. However, since the definition of wreck 'includes' the above categories, it is probably right that the definition would also include cargo washed off a ship and up on to a beach.

<sup>2</sup> s. 237(3)

<sup>3</sup> s. 240

<sup>4</sup> under s. 243(5) Often around 80% of the net proceeds

<sup>5</sup> see also s.240 as amended by s.22 of the Merchant Shipping and Maritime Security Act 1997

<sup>6</sup> see s. 245(1)

<sup>7</sup> s. 246(4)

<sup>8</sup> s. 246(3)

<sup>9</sup> s. 247

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The receiver may also in relation to a shipwreck, without a warrant, take command of all persons present (but not interfere as between the ship's master and his crew in the management of the ship), assign duties, pass over any land and requisition any vehicle that 'may be near at hand'<sup>10</sup>. It is probable she may delegate the execution of some of her powers to the MCA, police or Customs & Excise.

The current Receiver has been proactive in showing leniency to encourage honesty in relation to reporting, particularly historical, wrecks. This is probably best demonstrated in the 'Wreck Amnesty' which was held in 2001 to encourage the handing in of objects found on wrecks and consequentially gathering information about previously unknown wrecks<sup>11</sup>.

The Dealing in Cultural Objects (Offences) Act 2003<sup>12</sup> sets out further penalties if a person dishonestly deals in a 'cultural object'<sup>13</sup> he knows or believes to be tainted<sup>14</sup>. A cultural object can include something that has been removed from "any site comprising or comprising the remains of any vehicle, vessel...or part of any such thing"<sup>15</sup>, but in order for it to be tainted its removal must constitute an offence<sup>16</sup>. It is immaterial whether the site is above or below water for the purposes of the Act<sup>17</sup>. This would therefore include anything removed from a wreck that has not been reported to the Receiver of Wreck. Dealing in an object includes importing it,<sup>18</sup> so any objects brought back to the UK from a wreck outside UK territorial waters which have not been reported to the Receiver of Wreck will fall within the scope of the Act. A person guilty of an offence under this Act is liable to a fine and/or imprisonment for up to 7 years<sup>19</sup>. It is therefore a serious offence.

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<sup>10</sup> ss. 232, 233 & 234.

<sup>11</sup> MCA Press Notice No 178/02 July 18th 2002

<sup>12</sup> Does not apply in Scotland

<sup>13</sup> An object of historical, architectural or archeological interest. s. 2(1)

<sup>14</sup> s. 1(1)

<sup>15</sup> s. 2(5)(c)

<sup>16</sup> s. 2(2)(b)

<sup>17</sup> s. 2(7)(b)

<sup>18</sup> s. 3(1)(a)

<sup>19</sup> s. 1(3)(a). A person guilty under the Act is liable on conviction on indictment to imprisonment for 7 years, or a fine, or both. If the conviction is summary, the potential prison term is reduced to 6 months (s. 1(3)(b)).