

## EXECUTIVE NOTE

### THE SEA FISHING (ENFORCEMENT OF COMMUNITY CONTROL MEASURES) (SCOTLAND) AMENDMENT ORDER 2009

1. The above instrument was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981. It is subject to negative resolution procedure.

#### **Policy Objectives**

2. This Instrument is necessary to enforce Council Regulation (EC) No. 1966/2006 and Commission Regulation (EC) No. 1077/2008 in relation to the obligation to electronically transmit information that is currently required to be recorded in sales notes and take-over declarations. This obligation came into effect on 1 January 2009.

3. These Regulations also extend the electronic reporting requirement to logbook and transshipment data. This requirement does not come into effect until January 2010, at the earliest, and will be implemented separately.

4. The instrument amends The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 (which enforces the EU obligation to submit sales notes and take-over declarations under Article 9 of Council Regulation (EEC) No. 2847/93) to provide for the requirement to transmit sales note and take-over declaration data electronically.

5. The electronic reporting requirement applies to registered buyers, registered auctions or other authorised entities or persons that are responsible for the first sale of fishery products and have an annual financial turnover in first sales of fishery products in excess of €400,000. Those responsible for the first sale/marketing of fishery products in Scotland currently require to be registered by the Scottish Ministers under The Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005 (SSI 2005/286).

6. Whereas sales notes (and take-over declarations) have previously been submitted in paper form, all registered buyers and sellers that are subject to the electronic reporting requirement must now transmit sales note and take-over declaration data by electronic means. Those registered buyers and sellers that are not subject to the electronic reporting requirement must either continue to submit paper sales notes and take-over declarations or, if they prefer, opt to transmit such data electronically.

7. The benefits of implementing the electronic reporting obligation include: better controls for cross-checking fish landing data; timelier reporting of data; greater accuracy of data held; standardisation of the data processed by EU Member States,

and a reduction in the administrative burden on industry and Government associated with the submission of paper sales notes (and take-over declarations).

8. The Scottish Ministers are required to maintain a register of registered buyers and sellers that are subject to the electronic reporting requirement and to provide this information to the European Commission. The Scottish Ministers will review the register annually and provide all registered buyers and sellers with a form on which they must inform the Scottish Ministers, before 1<sup>st</sup> October in each calendar year, whether or not their annual financial turnover in first sale fish for the preceding calendar year exceeded €400,000. For the purpose of updating the register for each calendar year, the annual financial turnover which is assessed against the €400,000 criterion is that of the calendar year two years previously in accordance with Article 2(1) of Regulation 1077/2008 (i.e. the register for 2010 will be based on registered buyers' and sellers' annual financial turnover in first sales of fishery products for 2008.) The sterling equivalent of €400,000 is calculated by application of the European Central Bank's official average euro foreign exchange reference rate for the calendar year for which annual financial turnover is being assessed. The average is used to account for fluctuations in the currency exchange rate throughout the year.

## **Consultation**

9. Along with the rest of the UK, the Scottish Government issued a written consultation to all registered buyers and sellers and fishing representative groups on 11 February 2008 – 5 May 2008 on the detailed rules and the UK's proposals for implementation. The response to the consultation was extremely low. To engage more directly with buyers and sellers, the Scottish Government issued each buyer and seller with a form that set out the requirements of the EC Regulations and required them to declare whether or not their annual financial turnover exceeds €400,000 and to state their preferred method of electronic transmission.

## **Financial Effects**

10. There are financial implications for buyers and sellers in Scotland, which are detailed in the Regulatory Impact Assessment. Although there will be some initial costs involved in installing new or adjusting existing systems for some registered buyers and sellers, both the private and public sectors are expected to benefit from a reduced administrative burden as a result of implementing electronic reporting of sales note and take-over declaration data. No significant additional enforcement costs are anticipated for Marine Scotland Compliance.

## **The Electronic System**

11. The Scottish Ministers will specify the electronic systems by which sales note and take-over declaration data can be transmitted, so that the data can be easily

processed by Marine Scotland. Such data is vital for enforcement purposes in cross-checking landing data and ensuring effective management of quota, which is why the Scottish Government engaged closely with industry on the electronic options available. As every buyer and seller in Scotland is registered by the Scottish Ministers, it is fairly straightforward to provide them with information about the electronic systems available. The relevant electronic systems will be specified: (1) in a form, issued annually to all registered buyers and sellers for the purposes of reviewing and updating the register of those subject to the electronic reporting obligation, and (2) on an official website.

12. Take-over declarations are rare; none were submitted to the Scottish Government in 2008. There is only one means by which take-over declaration data can be transmitted electronically: through [www.fish.register.gov.uk/scotland](http://www.fish.register.gov.uk/scotland) where a downloadable form is available.

13. To provide some flexibility, buyers and sellers that require to electronically report sales note data will be able to opt for the specified electronic system that best suits their business needs. There are currently four systems by which sales note data can be electronically transmitted: (1) e-mail using a supplied file format, e.g. CSV (Comma Separated Values); (2) on-line data entry of multiple sales notes using an excel spreadsheet; (3) a web-based system, and (4) off-line data entry for single sales note transmission. Smaller companies and individuals can use [www.fishregister.gov.uk/scotland](http://www.fishregister.gov.uk/scotland) to transmit online sales notes. This web-based system has been developed by the UK and is free of charge. Larger companies can use off-line transmission. This has been developed in conjunction with the companies and has been added to their existing systems. The Scottish Government has made available the web-based system and the CSV format for off-line transmission.

14. The aim is to establish a UK electronic sales note system to simplify and speed up the transmission of data related to the first sale of fishery products. Accordingly, to extend the benefits of electronic reporting, it is also open to buyers and sellers that are not subject to the requirement to elect voluntarily to transmit sales note data by electronic means.

Marine Scotland  
Scottish Government

# REGULATORY IMPACT ASSESSMENT

## 1. Title of Proposal

1.1. Introduction of electronic sales notes system for buyers and sellers of first sale fishery product, The Sea Fishing (Enforcement of Community Control Measures) (Scotland) Amendment Order 2009.

## 2. Purpose and Intended Effect

### Objectives

2.1 The aim is to establish a UK electronic sales note system for first sale fish to simplify and speed up the transmission of first sale fish data. A consequence of this change will be the standardisation of this type of information across European member states and to minimise the current administrative burden associated with buying first sale fish for industry and data entry and cross checking for Marine Scotland Compliance.

### Background

2.2 In November 2006 European Ministers agreed to the introduction of electronic recording and reporting of fishing activities for certain groups including registers of buyers and sellers of first sale fish and over 15 meters in overall length. These measures are set out in the Control Regulation 1966/2006. This new Regulation does not signal any change to the current reporting requirements but to the method of submission. The Regulation also extends the electronic reporting requirement to logbooks but this requirement does not come into effect until January 2010 for over 24 meters vessels and January 2011 for over 15 metre vessels. Therefore, e-sales notes and e-logbooks will be implemented separately.

2.3 The Scottish Government will bring in legislation to ensure that from 31 April 2009, all registered buyers and sellers with an annual turnover of fishery products of more than €400,000 (approx £240,000) are required under EU legislation to record and submit records of first sale fish to Fisheries Administrations by electronic means rather than by paper. For those registered buyers and sellers that are not captured by the €400,000 condition, they will be allowed to continue to submit paper sales notes but can opt to do it electronically should they wish to. Marine Scotland is required to maintain a database of registered buyers and sellers that are submitting electronically and to provide this information to the Commission. Marine Scotland will undertake an annual exercise to establish which buyers and sellers are captured by the euro threshold.

2.4 There is already a web-based system for buyers and sellers to submit their sales notes electronically. Currently 12% of sales notes are being entered on-line the introduction will increase that figure to over 80%. The derogation for buyers and

sellers under the €400,000 limit means that those buyers and sellers responsible for the majority of sales notes are affected.

## **Rationale for government intervention**

### **3. Consultation**

#### **Within government**

**3.1** As with any other Council Regulation the detailed rules were developed within EU working group throughout 2007 and 2008. The Scottish Government participated in those discussions with DEFRA, DARDNI and WAG. Through implementation of the Regulation and in developing the electronic systems the Marine Scotland has engaged fully with procurement, legal, IT, FISS Board and Marine Scotland Compliance. A UK project board was set up and each administration has established its own implementation board. The Scottish Implementation Board is chaired by the policy lead and its members are made up from Marine Scotland Compliance and representatives from the buyers and sellers organisations and their IT suppliers.

#### **Public Consultation**

**3.2** A public consultation was held on from 11 February to 5 May 2008 on government's proposals to implement the new European rules. Very few responses were received from the 500 consultation documents that were issued. Marine Scotland regularly updated Registered Buyers and Sellers, license holders and the fishing industry throughout the discussions and drafting process of the Regulation and that transparency is hoped to be the reason for such a low response.

**3.2** However, it was clear from those few responses received that there were general concerns over the format that data is transmitted in. As with any change to current practice, there were concerns over compatibility with existing systems and the cost of changing those systems to meet the new requirements. Some respondents asked whether funding would be available to ease that cost associated with the changes to existing IT systems that some buyers and sellers already used. To respond to this concern and to make it cheaper for smaller buyers and sellers several options for data submission were developed, further details are outlined in Section 4. No funding has been made available for this requirement but by providing a method of submission with no costs we hope that we have made it accessible to all.

**3.3** Marine Scotland opted for direct liaison with buyers and sellers through the Scottish Implementation Group using it to consult and shape the design of the various submission systems. It was hoped that by directly liaising with the companies we would implement a system that could meet their current business needs without putting additional demands on them. Marine Scotland identified the companies who were captured by the 400,000 euro limit. The analysis showed that 106 companies were responsible for approximately 80% of sales notes. Marine Scotland then issued a form to all registered Buyers and Sellers in Scotland asking them to confirm their turnover and whether they were captured by the 400,000 euro

limit and to indicate which transmission option they preferred. Given the low response to the public consultation it was important to give buyers and sellers another opportunity to vote for a preferred transmission option. Marine Scotland Compliance followed this up with visits to the individual companies to ensure a 100% return.

## **4. Options**

4.1 Two options have been considered in implementing this Regulation: 1. Do nothing and option 2 an electronic sales note system with various submission options. Application of the requirement for registered buyers and sellers to submit sales notes electronically if their turnover is over €400,000 and for buyers and sellers under the threshold are able to chose to submit electronically should they opt to. The Regulation also applies to takeover declaration but they are rarely used – none were received by UK Fisheries Administrations in 2008. Also the holder of the fish may not be a registered buyer or seller of first sale fish. The UK therefore decided that all takeover declarations should be recorded and submitted using the web-based system as it will not require the person making the declaration to be a registered buyer or seller of first sale fish but would allow the registration details of a registered buyer and seller that wished to make such a declaration to be used to populate the information.

### **Option 1**

4.2 Do nothing. This option would leave the Scottish Government open to infraction proceedings for failure to implement the Council regulation. There would also be no reduction in administrative burden and would not contribute to efficiencies in capturing or cross checking sales data.

### **Option 2**

4.3 It is difficult to impose a “one system fits all” solution on businesses with varying capabilities and structure, including those smaller buyers who are not legally required to submit electronically but can use it should they opt for it. To give businesses more flexibility 4 options for recording and submission of data for registered buyers and sellers were developed. Each system has the ability to send sales note data to Marine Scotland Compliance for cross checking and for that data to be cross checked and then stored into FIN (Fisheries Information Network which records all Scottish quota and landing data). UK fisheries administration will enable their records of sales at auction or purchases direct from fishing vessels to be sent to Marine Scotland Compliance via (1) email using a supplied file format such as CSV, Comma Separated Values; or (2) On-line data entry of multiple sales notes using an excel spreadsheet, for those business without database records or (3) A web-based system will be available to record, submit and view information on their sales; (4) Off-line data entry and submission of information via email

## **5. Costs and benefits**

### **5.1 Sectors and groups affected**

As there is an annual turnover threshold in first sale fish applied to these Regulations the majority of those affected are large fisheries processors and fish merchants. There is also an impact on Marine Scotland Compliance as the organisation responsible for monitoring the landing and selling of fish.

### **5.2 Benefits**

**Option 1 – there are no benefits to maintaining the status quo. In the event of infraction there could be a financial dis-benefit for not meeting our European requirements.**

**Option 2 – At a minimum the introduction of an electronic sales note system will result in approximately 80% of sales notes being submitted in a more timely manner, by removing additional administrative process.**

### **5.3 Costs**

**5.3** In 2008 106,923 sales note were submitted in Scotland. The number of sales notes from those companies meeting the €400,000 was 87%.

5.4 All Buyers and Sellers of first sale fish are required by law to submit completed sales notes within 48 hours of a sale. The larger companies have opted for making modifications/upgrading to their internal systems selecting options 1 and 2 as outlined in 4.2. For some buyers this is an adaption to accounting systems. The Scottish Government' internal IT team estimate that the costs will vary depending on the size and scope of the existing electronic capabilities but that an average IT consultant will cost £500 per day with a maximum 15 days required to develop, test and prove any changes. Only six companies are making changes to their existing business systems in anticipation of the new system being introduced, however these companies are the main sellers/agents with offices in more than one Scottish port. Of course, there is also the email offline option and web based option which have no associated development costs for buyers and sellers but it does assume that there is access to a computer and the internet. The more sophisticated options are aimed at those companies with a multi million pound turnover and the Scottish Government is not providing any financial assistance to buyers and sellers to assist with this. The transfer to electronic submission will lead to better efficiency and cross checking for buyers and seller which will improve business quality by allowing fish agents to be able to speed up the process and maximise the market price for the catch as the process will be expedited.

## **6. Small/Micro firms**

**6.1** The majority of businesses affected will be small or micro businesses

6.2 Smaller businesses who do not submit a large volume of sales notes or who don't have a sophisticated accounting system that can be adapted can opt for the transmission options that do not have any IT requirements other than access to the internet or email. This obligation applies to all buyers and sellers with an annual turnover in first sale fish of €400,000 but of the 106 companies captured by the threshold hold there is a large range in size and income. It was, therefore, important to offer a range of transmission options depending on requirement and affordability.

## **7. Legal Aid Impact test**

7.1 The proposals will not have any impact upon legally compliant buyers and sellers of first sale fish. Buyers and sellers are legally required to submit sales notes within 48 hours of all the data being available. Persistent failure to comply with that requirement undermines the credibility of sales data and stock sustainability. It is then the responsibility of Marine Scotland Compliance to investigate whether the failure to submit sales data is because of the trafficking of "black-fish". In the event of that Marine Scotland Compliance will still be able to refer cases to the COPFS for prosecution but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so.

## **8. Test run of business forms**

8.1 There has been a rigorous and robust user testing programme for delivery of this system. A small team composed of staff from each UK fisheries administration tested Proof of Concept process in partnership with the IT developer. Once they were satisfied that the process was effective the tester group then initiated intense user testing of the 4 methods.

8.2 In Scotland, the administration of this system will be managed on a day to day basis by Marine Scotland Compliance. In preparation, the Scottish Government and the Marine Scotland Compliance along with the other government administrations have been working in partnership to develop changes to the current IT systems so that it can support the proposals.

## **9. Competition Assessment**

9.1 **As outlined in 2.3** this proposal would impact directly on the fish catching sector and those involved in the initial buying and selling of fish. Overall, there will be no negative impact arising from this proposal.

9.2 The proposal will affect all businesses in the fish-catching sector in the same way and is unlikely to directly affect the market structure or change the number or the size of firms. It will not lead to higher set-up costs for new or potential firms that existing firms do not have to meet. The catching sector is not characterised by rapid



technological changes and the proposal will not stop firms providing products or services that they would otherwise provide

9.3 It is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment is necessary.

9.4 The costs of the proposal, as with the current system, will only fall on businesses that do not comply with fisheries regulations. The competitive position for legitimate operators may improve as they are more likely to be able to operate on a level playing field.

## **10. Enforcement, sanctions and monitoring**

10.1 Under Article 9 of the Control Regulation, a conviction for failure to submit a sales notes has a maximum £50,000 fine. We will be taking a pragmatic view with the transition to electronic submission as it may, for some buyers and sellers, take a period of education. However, the failure to submit sales notes in any format will be taken very seriously. Fishery officers will offer buyers and sellers every opportunity for training and discussion as the new electronic sales notes system is implemented but buyers and sellers will still be bound by their legal obligations under Article 9 of the Control Regulation.

## **11. Implementation and delivery plan**

11.1 The UK project Board for e-sales has developed guidance notes for registered buyers and sellers setting out the requirements for the Regulation and will be distributed in advance of the coming into force date. The representatives of the Scottish Implementation Board will be involved in the training of Marine Scotland Compliance office staff.

## **12. Post-implementation review**

12.1 Marine Scotland Policy will liaise directly with Marine Scotland Compliance on the implementation of this Order. The Marine Scotland Compliance will report annually on the number of prosecutions referred to the COPFS and administrative penalties through its normal reporting cycle to the Scottish Ministers. We will review the implementation of the Order within 3 years of it being fully commenced.

## **13. Summary and recommendation**

13.1 To proceed with option 2.

### **Summary costs and benefits table**

<b>Option</b>	<b>Total benefits per annum: economic, environmental and social</b>	<b>Total cost per annum: economic, environmental, social, policy and administrative</b>
<b>1</b>	Nil – no improvement to recording of sales data.	Nil.
<b>2</b>	Efficiency for business to supply data on	Set up - Programme is being

	fish sales for Marine Scotland Compliance to allow for better management of catch versus quota.	delivered on a UK basis, Scottish share is 40% £131,000 and £24,000 is the annual running cost fee.
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**12. Regulatory Quality Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....  
Date.....

Richard Lochhead  
Cabinet Secretary for Rural Affairs and the Environment  
Scottish Government