

**EXPLANATORY MEMORANDUM TO THE
REGISTRATION OF FISH BUYERS AND SELLERS AND DESIGNATION
OF FISH AUCTION SITES REGULATION 2005**

2005 No. 1605

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations provide for the registration and record keeping of those involved in the selling of first sale fish at auction and those involved in the purchase of first sale fish direct from fishing vessels or their agents and the designation of auction sites in England.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Schedule to SI 2000 No. 51 (The Sea Fishing (Enforcement of Community Control Measures) Order 2000 transposed EU legislation (Council Regulation 2847/93) in regard to control and enforcement of the Common Fisheries Policy (CFP). Under this SI, authorised first sellers of fish and the buyer of fish from unauthorised sellers were required to submit sales notes for that fish within 48 hours of the sale.
 - 4.2 Whilst implementing certain aspects of the EU legislation, others, including the requirement to have the auction centres authorised and all sellers at those centres registered, were not. This was further complicated when in 2002, the new CFP framework regulation (Council Regulation (EC) No 2371/2002), set out additional requirements to have all buyers of first sale fish registered.
 - 4.3 These Regulations provide for the registration of buyers and sellers of first sale fish and the keeping of record by those so registered. They also provide for the authorisation (“designation”) of auction centres.
5. **Extent**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
 - 6.1 Not applicable

7. Policy background

- 7.1 The aim of these Regulations is properly to transpose EU requirements for the registration of those involved in the sale and purchase of first sale fish and the designation of auction sites. It provides a derogation for direct sales of less than 25kgs for personal consumption. It creates offences and provides powers to British sea fisheries officers in relation to the sale of first sale fish by unregistered sellers or buyers and the failure to keep records of such sales.
- 7.2 The Government consulted publicly in July 2004 on the proposal for these Regulation and received in the region of 40 responses from a range of industry organisations and individuals. The responses were mixed with some giving full support to the measures and others criticising the proposal as an unnecessary measure. Following the consultation a joint industry advisory group has been sent up to aid discussion on practical implementation matters with industry and assist implementation.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum

9. Contact

Julie Fitton at the Department for Environment, Food and Rural Affairs Tel: 020 7 270 8131 or e-mail: julie.fitton@defra.gsi.gov.uk can answer any queries regarding the regulations.

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of proposed measure

The Registration of Fish Buyers and Sellers Regulations 2005.

2. Purpose and intended effect of measure

(i). Objective:

These Regulations implement the provisions of Article 9 of the EU Control Regulation, Council Regulation 2847/1993, and Article 22(2) of the CFP Framework Regulation, Council Regulation 2371/2002, relating to the designation of auction centres and registration of buyers and sellers (i.e. auction traders) of first sale fish and the provision of sales notes. Cross checking these sales notes with landings data will improve the monitoring and control of landings of fish taken from Community and other waters and ensure that such landings are properly recorded and capable of verification. The measures will also assist consumers and those involved in secondary processing or distribution of fish to be satisfied about the provenance of fish and that it has been legitimately caught.

(ii). Background:

Article 9 of the Control Regulation and Article 22(2) of the Framework Regulation require auction centres and the seller (i.e. auction trader) and buyer of first sale fish to be registered with the competent authorities in the Member State concerned. No UK system of authorisation for auction centres, buyers and sellers is currently in place. Article 9 of the Control Regulation also requires sales notes containing relevant information relating to the landing, first marketing and sale of fisheries products in the Community to be submitted to the competent authorities in a Member State. Sales notes should be provided by the sellers of first sale fish when sold through designated (registered) auction centres or markets or by buyers for all other forms of sale. Currently, sales notes are routinely supplied in respect of landings by over 10 metre vessels in England, although not always as required by the buyer. The submission of sales notes has not been rigorously enforced in respect of landings from under 10 metre vessels in England. Instead the Department has used a system of sampling to assess the level of landings by such vessels.

In addition to the requirements of the Control Regulation, those engaged in the buying and selling of fisheries products must comply with a number of regulations and directives at both a Community and national level. These include European Regulations setting out marketing standards for fisheries products and Local Authority hygiene standards. More recently Annex III of Council Regulation 27/2005 ("the TACs and Quotas Regulation") introduced detailed requirements for the weighing of pelagic species (herring, mackerel and horse mackerel). Council Regulations 423/2004 and 811/2004 which

deal with recovery plans for cod and northern hake stocks respectively introduce requirements for a percentage of landings of those species to be weighed prior to first sale. While the measures that are the subject of this regulatory impact assessment will not enforce these overarching requirements, there are obvious policy linkages.

Devolution : These Regulations will apply only in England. Separate Regulations are being introduced by the Scottish Executive, the Department of Agriculture and Rural Development (Northern Ireland) and the Welsh Assembly Government.

(iii). Rationale for Government Intervention

Scientific evidence shows many of the main fish stocks found in the waters of the European Community are near or at historically low levels caused mainly by overfishing. Without improved fisheries control, conservation and other measures designed to safeguard fish stocks and ensure their long-term sustainable exploitation will not be fully effective and certain stocks risk collapse with significant impact on the fishing industry. Non-implementation of the EU requirement could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is currently taking a close interest in implementation of fisheries requirements by Member States.

3. Consultation

Within Government

UK policy in relation to the adoption and implementation of this scheme has been agreed by Defra and the other Fisheries Departments in the UK. The Small Business Service and Better Regulation Executive have also been consulted in the preparation of this RIA.

Public Consultation

Two rounds of consultation with relevant stakeholders have been undertaken, in August 2002 and July 2004. In the region of 50 responses from industry were received from the latter consultation – some seeking clarification of their own position but not making substantial comment on any particular aspect of the consultation. Those who did comment on the content of the consultation gave a mixed response with full support for the proposed regime expressed by many respondents and others who felt that the regime was unnecessary and unwelcome. Some of those who did give support to the regime did however express concerns on the practical application. Other recipients asked for additional or stricter controls to be included in the Regulation e.g. additional controls for bass fishery and a lower limit for personal consumption limit.

4. Options

Two options have been identified

Option 1

Continue to apply the existing arrangements for those involved in selling and buying first sale fish.

Option 2

Require buyers and sellers of first sale fish landed into England to register with Fisheries Departments, to designate the auction centres or markets at which such fish may be sold and to require all sellers of fish by competitive bidding and all buyers of direct sale fish to supply sales notes.

5. Costs and Benefits

i) Sectors and groups affected

Businesses affected by the new measures would be those involved in the selling and purchase of first sale fish landed into England. Currently, buyers and sellers of first sale fish landed by over 10 metre vessels submit sales notes to Defra in accordance with Article 9 of the Control Regulation. As already stated buyers of fish by direct sale from under 10 metre vessels do not uniformly supply sales notes for each and every transaction but will have to do so once the new regulations come onto force. No UK system of authorisation for auction centres, buyers and sellers is currently in place.

ii) Benefits

Economic

Option 1 – Continue to apply existing arrangements

This would not add any additional administrative burdens to industry. However it would provide no benefits in terms of improving control measures and the conservation of fish stocks. In addition, this option would mean that the UK would not be complying with its obligations under the Common Fisheries Policy, including the obligation to register buyers, sellers and auction centres and ensure the proper submission of sales notes. Under current arrangements when fish are sold, sales notes are often provided by the vessel's fish selling agent - even in circumstances where the fish is not offered for sale at auction but sold directly to a buyer. In some situations this lack of independence between the person supplying the landing declaration and the person responsible for submission of the sales note is an enforcement risk, as there is no disincentive to supply inaccurate figures which could mask illegal landings. In any event, it is not always possible for the control authorities to verify that the information supplied is a true reflection of the quantities landed. The European Commission has been critical of the current arrangements as they view those who currently supply sales note information to Fisheries Departments to be too closely linked (in both financial

and business terms) to the fishermen catching the fish. Failure to act could therefore leave the UK in breach of its obligations under the CFP and potentially liable to infraction proceedings.

Option 2 – Introduce a scheme of registered buyers/sellers and the designation of auction centres and fish markets

This option would ensure that the provisions of the Control Regulation and the Framework Regulation are being properly applied and would help to improve current control measures and assist in the effective conservation of fish stocks. Importantly, the measures would help to restrict the scope for the marketing and sale of undeclared or mis-reported landings of fish (so called “blackfish”) which undermine measures taken to conserve fish stocks and threaten the long-term future of the industry.

Social

Introduction of these measures will help to control the trade in blackfish which not only threatens the sustainability of fish stocks but undermines prices of legitimately traded fish. The inclusion of documentary controls on those buying directly from fishing vessels provides for a more even and equitable approach to enforcement. Currently the burden on monitoring and compliance rests with the catchers i.e. fishing vessels. Those currently buying fish carry no liability to report accurately to the control authorities the quantities and species of fish they have purchased.

Environmental

Greater control of the trade in blackfish will have a beneficial impact upon the health of the fish stocks.

iii) Costs

Economic

Registration

The Fisheries Departments are not going to impose any charges or fees for registration and there should therefore be no additional costs imposed for this one-off process. There should be no additional costs for buyers and sellers associated with maintaining records of fish sold or purchased, as these would normally be kept as part of the day to day operation of businesses. No additional costs are envisaged to industry for the designation of auction centres.

Whilst there will be no costs due to registration charges or fees, there will be a minor administrative cost for businesses relating to the one-off completion of the paperwork, particularly as all buyers (including restaurants etc) are required to register. It is difficult to estimate the total cost given uncertainties about the total number of businesses that will be required to register and the

time required to register. There are for instance some 3,500 under 10 metre vessels in England many of which sell most or all of their catch to a variety of local merchants, hotels, restaurants, etc. Detailed guidance has been prepared for those applying for registration to make the process as straightforward as possible and it is estimated that it should take no more than 20 minutes to complete the application form.

Provision of sales notes

For landings by the over 10 metre fleet

There were in excess of 40,000 landings by over 10 metre vessels in England 2004 and it is estimated that the current administration cost of providing sales notes in respect of these landings (stationary, postage and staff time) is around £0.16 million. The new requirements will have no direct effect on vessel owners, who will, as now, have to continue completing logsheets and landing declarations for the fish that they catch and land. Sellers of fish through auctions already submit the necessary sales notes in accord with the Control Regulation and so there should be little impact on registered sellers.

For direct sales, the obligation to submit the sales note will now rest with the buyer. Until now that obligation may have been met by the vessel's fish selling agent, although most buyers will already supply some of the required information to fish selling agents for onward transmission to the Fisheries Departments. It is therefore likely that the buyers' obligations can largely be met through the use of existing documentation. Some business may choose to adapt their business systems or acquire additional resources. Although not strictly required for the proposed paper-based system some businesses may also choose to make changes to their IT systems, but the costs are expected to be modest.

For landings by the under 10 metre fleet

As stated above buyers of direct sale fish from under 10 metre vessels have not been required to submit sales notes for all purchases but will have to do so from now on. This will include all purchasers of direct sale fish, including hotels, restaurants, etc. The costs for them of providing sales notes are not easy to assess. There were some 73,000 English recorded landings in England by the under 10 metre fleet in 2004. Some of these may have been grouped and many under 10 metre landings may go directly to several purchasers. The total number of sales notes required from direct purchasers from under 10 metre vessels is therefore likely to be at least 100,000 but could be substantially higher depending upon the number and range of purchases made. This would indicate a minimum new administration cost of providing sales notes in respect of these landings (stationary, postage and staff time) of £0.4 million.

As they will not have first hand knowledge of all of the information they will be required to include in any return made to the Fisheries Departments, buyers will have to rely on others to provide that information and then to pass that on

in good faith in the returns they make. If they were not able to simply pass that information on but had to verify that information for themselves before submitting it to Fisheries Departments the costs involved could be very significant. Some under 10 metre vessel owners have expressed concern that this may discourage some businesses from buying supplies directly from them in future. However the regime is designed in such a way that it allows buyers to pass on information from third parties to Fisheries Departments. Although they are liable for the accuracy of that information, they could not be convicted of any associated offence unless they had not acted in good faith and had acted recklessly in providing the information.

There will be no direct effect on vessel owners, who under EU law are not required to complete logsheets or landing declarations. If they do not already do so they will need to supply those buying fish directly from them with additional information so that the buyer can submit the sales note. There should not be any additional costs for the sellers of fish sold through auction, as sales notes will already be supplied

Social

None anticipated

Environmental

None anticipated

6. Small Firms Impact Test

The majority of business affected will be small or micro businesses involved in the selling of fish as auction traders or in the purchase of fish. This will range from individuals trading on their own to small companies employing modest numbers of staff. Most sellers affected already make some resource available to collate the sales information with a view to providing it to the fishermen who supply them or their agents. It is estimated that over 55% of fish landed into England involves some element of direct selling to buyers many of whom will be small or micro businesses. The figure will be higher for under 10 metre vessels. Almost all shellfish sales are direct sales. Fisheries Departments will provide sales notes and templates for use by businesses in order to minimise the impact of the new measures.

7 Competition Assessment

The regulations will have impacts on the fish catching sector, auctions and businesses buying fish directly from the fishing vessels. None of these sectors have more than a 10% market share.

The regulations are likely to have a more significant impact on some firms as a proportion of the costs of completing the sales notes will be fixed, therefore the regulations will have a more significant impact on businesses that have a high number of relatively small transactions. These are likely to be smaller

businesses such as restaurants or retail outlets purchasing fish directly from fishermen. Exemptions will, however, apply to members of the public buying small amounts (less than 25kg) of first sale fish for private consumption.

The regulations are unlikely to directly affect the market structure or change the number or size of firms and they would not lead to higher set-up costs for new or potential firms that existing firms do not have to meet. The sector is not characterised by rapid technological change.

It is possible that the regulations will restrict the ability of some businesses in their choice of fish as, given the increased costs of buying fish directly, they may choose to purchase fish from registered auctions or other registered fish merchants.

The competition filter has therefore been applied to these regulations and as only two of the answers were positive, it is unlikely that there will be an impact on competition and there has been no requirement to undertake a detailed competition assessment.

8. Enforcement, sanctions and monitoring

Enforcement of the measures would be undertaken by the Sea Fisheries Inspectorate in England. Powers for enforcement officers and penalties for infringements are laid down in the Regulations.

9. Implementation and delivery plan

The registration process for all buyers, sellers and auction centres in England begins on 1 July and is expected to be completed by 1 September. From this date all buyers and sellers will have to submit sales notes in the required format. A joint implementation advisory group has been set up (post consultation) to look at practical implementation aspects. So far this group met on 3 occasions with helpful discussion on how to take matters forward. At the last of these meetings, it was agreed that officials would meet with specific industry groups to discuss registration and answer any subsequent questions. It is intended to send out guidance notes on registration with application forms and to publicise the need to register to as wide an audience as possible. This will include all licensed vessel owners, Sea Fish Industry Authority levy payers and adverts in appropriate trade journals. A short period of pragmatic enforcement will be agreed with the Sea Fisheries Inspectorate to ensure that new sectors effected by the regime (hoteliers, restaurateurs etc.) are fully aware and given an opportunity to register as a buyer etc.

10. Post-implementation review

The operation of the registration of buyers and sellers of first sale fish and the designation of auction centres and fish markets, including industry compliance, will be kept under review by the Department

11. Summary and Recommendations

To proceed with the introduction of the new registration scheme for all buyers and sellers of first sale fish.

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed: Ben Bradshaw

Date: 10th June 2005

**BEN BRADSHAW
PARLIAMENTARY UNDER SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT FOOD AND RURAL AFFAIRS**

Contact point for enquiries and comments:

Julie Fitton

Department for Environment, Food and Rural Affairs

Zone 7E

3-8 Whitehall Place

London

SW1A 2HH

Tel: 020 7 270 8131 or e-mail: julie.fitton@defra.gsi.gov.uk