

**EXPLANATORY MEMORANDUM TO THE  
THE SEA FISHING (RESTRICTION ON DAYS AT SEA) ORDER 2005**

**2005 No.393**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The instrument provides for the implementation in England of the EU days at sea arrangements under Annexes IVa and IVc of Council Regulation (EC) No. 27/2005. These are designed to limit the fishing time of vessels, in order to assist in the recovery of vulnerable stocks of cod (in the North Sea, West of Scotland, Irish Sea and Eastern English Channel) and sole (in the Western English Channel).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Although agreed in principle in late December last year, the definitive EU texts did not appear until 14 January. In addition, the drafting period for the instrument has been extended, in order to provide for adequate consideration with the Commission and other UK Fisheries Departments of appropriate implementation (particularly where the EU rules offer some degree of flexibility to Member State authorities). Since the Community controls are operative from 1 February, it is essential that the order providing for their implementation is introduced without further delay, to allow for the necessary enforcement in a timely fashion. For this reason we are proposing to breach the 21-day rule.

4. **Legislative Background**

- 4.1 Whilst the Fisheries Act 1981 allows for the direct application in the UK of EU fisheries legislation, national implementing legislation is required both to cover for the enforcement of any optional provisions contained within the Community rules and to establish the extent of any penalties that would apply to breaches of those rules.

5. **Extent**

- 5.1 This instrument applies to England and to English fishing vessels wherever they are active.

6. **European Convention on Human Rights**

- 6.1 not applicable

7. **Policy background**

- 7.1 Restrictions on the amount of time vessels capable of catching cod can spend at sea, have been in place for two years. The latest arrangements, operative from 1

February, represent a further limited tightening of the EU rules to improve the effectiveness of the scheme in contributing to the recovery of the stocks concerned. We believe these adjustments are justified.

7.2 The restrictions on sole are a new addition. We argued that the science indicated that the stock in the Western English Channel was not as threatened as those of cod and that therefore restrictions on fishing activity of a similar nature were unnecessary. The Commission, whilst sympathetic, pressed for some form of control and this was supported by the majority of Member States. We were ultimately prepared to accept the package, on the grounds that the regime would be much less onerous than that for cod and the number of days allocated to the restricted gear types would be unlikely to cause the UK fleet particular problems this year. We are however mindful of the fact that the Commission will revisit the controls for next year, in the light of experience.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The adjustments for cod are unlikely to have a significant impact on the public sector. The addition of sole will bring an increased number of vessels within the control regime, but we do not anticipate this will require a noticeable increase in enforcement or administrative resources.

## **9. Contact**

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Tel: 020 7270 8021 or e-mail: [simon.waterfield@defra.gsi.gov.uk](mailto:simon.waterfield@defra.gsi.gov.uk) can answer any queries regarding the instrument.

## REGULATORY IMPACT ASSESSMENT

### 1. Title

The Sea Fishing (Restriction on Days at Sea) Order 2005

### 2. Purpose and intended effect of measure

#### (i) Objective

The Statutory Instrument provides for the enforcement of the EU measures which limit, from 1 February 2005, days at sea by fishing vessels, with the objective of reducing damage to cod and sole stocks (Annexes IVa and IVc respectively). The measures extend and enhance controls applied between February 2004 and January 2005 in respect of cod (Annex V). However, the arrangements for sole are completely new.

The SI applies to the English fleet, wherever it is active. Separate secondary legislation establishing equivalent arrangements is being made for Scotland, Wales and Northern Ireland.

The policy goal in implementing the EU measures is to meet UK obligations to apply this fisheries legislation effectively, while providing the flexibility allowed by the measures to the benefit of the industry, and avoiding undue difficulties in or costs of, administration and enforcement.

#### (ii) Background

At the December 2004 Council of Ministers, agreement was reached on a further year's extension of the restrictions on fishing effort for cod. The measure (known as Annex IVa) continues the work of its predecessor (known as Annex V) by tightening up on its enforcement, to ensure the necessary effort reduction is actually delivered. A similar measure (known as Annex IVc) has now been introduced to protect the sole stock in the Western English Channel.

The Annexes are part of EU Regulation 27/2005. They set the number of days at sea that a vessel may carry certain types of fishing gear in the North Sea, Irish Sea, Eastern Channel and waters west of Scotland (in respect of cod) and the Western Channel (in respect of sole). The number of permitted days per monthly management period varies depending on the type of gear carried by the vessel.

In addition the measures permit Member States to allow:

- the management periods of one month to be replaced by ones of up to 11 months;
- additional days to be granted to vessels continuing to limit their catches of cod or using more sustainable gears;
- some flexibility on the track record requirement relating to the ability to fish in the restricted areas;
- the transfer of days from one vessel to another within the same gear category; and
- a day to be counted as any consecutive period of 24 hours.

The SI provides for these management options to be available to fishermen, subject to some limitations on transfers between vessels in order to respect the aims of the EU measures. The EU measures have direct effect in the UK, but enforcement powers are required, and this SI also establishes the necessary offences and penalties to ensure compliance.

The EU measures, which were agreed by the Council of Ministers in Brussels in December, have to come into force on 1 February. To meet EU obligations normal timetables for preparing implementing legislation have therefore had to be telescoped.

This RIA relates to the implementing SI, not the EU measures themselves.

### Cod

However, *as background to this RIA*, the effect of the directly applicable EU measure for cod, is to maintain a cap on the effort of certain types of vessels. Vessels targeting cod or undertaking beam trawling are eligible for a basic 14 and 15 days per month respectively under the EU measure (equivalent to 168 and 180 days per year), before transfers take place. 41 English and Welsh vessels of these categories spent significantly more than that time at sea in the designated zones in 2001 (the base period for the scheme), of which 11 spent 250 or more days at sea there, and 2 spent 300 or more. Other categories of vessels face higher limits and will be less affected.

It is expected that the limits will cause considerable difficulty for some English vessels. It is not possible to quantify the actual impact of the EU limits, because vessel owners are likely to adjust their fishing practices in order to make the most efficient use of their permitted time at sea. They could also seek to increase their fishing in non-regulated areas. Not only that, the profitability of individual vessels, and thus their scope for adjustment of time at sea, varies greatly depending on a range of factors.

Pressure on cod from the UK whitefish fleet has reduced significantly during the application of the days at sea arrangements, not least because of the impact of the decommissioning scheme the Government ran in 2003, under which vessel owners could receive grants to scrap their boats and cancel the vessel licence. The scheme was designed to address the problems of those vessel owners most affected by the regime, by enabling them to leave the industry. The effects were most obvious in 2004, the first full fishing year following the removal of the vessels from the fleet.

### Sole

The Commission have for the last two years been trying to introduce a recovery plan for Western Channel sole in the light of their concerns about the state of the stock. We (and other Member States) have resisted, on the grounds that whilst requiring some management, the stock is not in the same sort of trouble as that of cod. We therefore favour assistance through technical measures like increasing the required mesh or minimum landing sizes.

Following further scientific concerns and in the absence of agreement amongst Member States on the nature of appropriate technical measures, we reluctantly accepted a scaled-down (and less onerous) version of the cod recovery plan, with an allocation of days which is unlikely to cause major problems for our fishermen. This will be something of an experiment and the Commission will then review the scheme in the light of experience over the year. In the meantime, we will continue to argue for more appropriate management mechanisms.

### (iii) Risk assessment

#### *Cod*

The original EU measure was introduced because of scientific evidence that stocks of cod have reached their lowest ever levels, and that direct cuts in fishing time by vessels were the only way to achieve their recovery to sustainable levels. The measure, together with cuts in allowable catches for cod, was designed to reduce directed fish mortality by 65%, as part of a future strategy to restore cod stocks to a sustainable level over the coming decade. It did not

however deliver and the latest measure is therefore designed to ensure the recovery programme remains on track.

### *Sole*

The new measure creates a relatively light regime designed to achieve stock recovery with the minimum of pain for the industry, but if at the end of the year the Commission consider the necessary targets have not been achieved, they will have no hesitation in proposing more stringent controls for the future.

#### (iv) Business sectors affected

Directly affected are many of the fishing vessels which operate in the restricted areas. To the extent that they cannot carry on their business, a reduction in numbers of vessels in a port can have effects on related local businesses, including suppliers to vessels, such as chandlers, and the purchasers of landed fish, including merchants and processing companies. These will generally be small businesses.

#### (v) Issues of equity and fairness

This RIA relates to the SI implementing the EU measures, not to the EU measures themselves. It does not therefore address issues such as the variation in numbers of permitted days per month between vessels with different categories of gear. However, looking broadly at the effects of the latest controls, the issue of whether the benefits of the measure will accrue to those subject to the controls can be addressed. The benefits of avoiding the collapse of cod or sole stocks, and in the long term their recovery, will be reaped by the fishing fleet which is subject to the EU controls.

The provisions made by the SI apply equivalently across the relevant sectors of the fleet.

### 3. Options

EU legislation requires Member States to enforce the provisions of fisheries controls. The range of offences and scale of penalties included in this SI, reflect the standard UK approach to equivalent EU fisheries legislation, itself influenced by experience and by European Commission expectations of effective enforcement activity.

The SI implements Government decisions as to the use of the flexibility permitted to Member States by the EU measures (see paragraph 2(ii) above). The options for implementation were:

- Option 1 - refuse to allow any of the permitted flexibility;
- Option 2 - permit it with certain limitations; and
- Option 3 - permit it with no limitations.

### 4. Benefits

Option 1 - this is the base option: it would provide no benefits to fishermen over and above those provided directly by the EU measure itself;

Option 2 - powers to transfer days provide flexibility to the industry to enable it to make best use of the available days. It could reduce the number of vessels which became unviable. (As could the granting of the various derogations, providing additional days for more sustainable fishing.) It could also increase fish catches in the

longer term, but within the levels considered acceptable by the Council in agreeing the EU measure (ie as not jeopardising the respective stocks);

Option 3 - this would provide further benefits to the industry, enabling the total number of days available to the fleet to be increased, but in the Government's view in ways which appear to be contrary to the spirit of the EU measure. In principle this option would minimise the effective cut in fishing effort and risk eroding the protection to be given to cod stocks.

## 5. Costs for business

### (i) compliance costs

#### *Policy costs of the measures provided for in this SI*

None of the options impose additional costs on the industry above those applied by the EU measures (though options 2 and 3 would reduce them).

#### *Implementation costs of the measures provided for in this SI*

Under options 2 and 3 fishermen will need to report any transfers of days they wish to make, on a simple form, to enable each vessel's entitlement to days to be monitored. This should not constitute a significant cost.

#### *Timescale*

The EU measures will last until the end of December 2005, but are then likely to be extended in some similar form or other.

### (ii) costs for a typical business

As described in section 5(i) above the costs will depend on the extent to which a vessel has to reduce its effective time at sea, and the extent to which vessels can adjust their practices cannot be quantified. It is clear however that under options 2 and 3 the flexibility for adaptation is greater, and the potential costs therefore appreciably reduced.

## 6. Consultation with small business

Virtually all businesses in the fish catching industry are small businesses. Since the original regulation for cod was agreed on 20 December 2002 there have been a number of meetings with representatives of the English industry. Those members of the industry who have written in to Defra have been contacted to discuss their concerns. The industry retain their disagreement in principle with the concept of limits on days fishing, but have constructively suggested issues for resolution in implementing the schemes. They have pressed for option 2 or 3 to be made available.

## 7. Competition assessment

The intention and effect of the EU measures are to impose tighter limits on vessels which fish for cod than on vessels which take cod as a limited bycatch (only those gears used to target sole are included in that scheme). The options considered above for the SI would not create significant distorting effects. Indications are that other Member States intend to implement the flexibilities in the EU measure in a similar way to that intended by the UK Government.

8. Enforcement and sanctions

The SI confirms offences for breaches of the EU measures, along standard lines for equivalent fisheries legislation and will be enforced by the Defra Sea Fisheries Inspectorate and their agents.

Defra have established a small team to advise the industry and monitor activity. Use of options 2 and 3 will require limited additional effort in this team to monitor transfers, possibly of the order of one person/year.

9. Monitoring and Review

The EU measures and the SI apply for the period to the end of December 2005. The Government will monitor the effects of the measures and feed into the European Commission our views on what should succeed them.

10. Consultation

Because the EU measures had to be implemented on 1 February, there was no opportunity for a further industry-wide consultation exercise. Consultations have however been conducted with various representatives of English fishermen. See also para 6 above.

11. Guidance

Provisional guidance was issued to the industry in January. More detailed advice will follow shortly.

12. Summary and recommendation

Although the SI essentially provides offences and penalties to permit enforcement of the directly applicable EU measures, there is scope to decide whether to take up the options provided within these measures. These provide flexibility for fishermen and help to reduce the costs to the industry. The Government must however ensure that flexibilities provided do not undermine the effectiveness of the regimes.

On that basis it would appear unreasonable to refuse the industry access to the benefits (Option 1) and inconsistent with propriety, including legal propriety, to allow the width of interpretation of the flexibilities permitted by the EU measure implied by Option 3. The Government therefore intends that Option 2 be adopted.

13. Declaration

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

Signed: Alun Michael

Date: 25<sup>th</sup> February 2005

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