EXECUTIVE NOTE

THE SEA FISHING (EU RECORDING AND REPORTING REQUIREMENTS) (SCOTLAND) AMENDMENT ORDER 2011

SSI 2011/59

1. This Order is made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 and paragraph 1A of Schedule 2 to the European Communities Act 1972. Paragraph 1A of Schedule 2 is used so that any reference in the Order (except in Schedule 2) to Article 62, 63, 66, 67 or 68 of Council Regulation (EC) No. 1224/2009 ("the Control Regulation") is construed as a reference to that Article as amended from time to time. The Order is subject to negative resolution procedure.

Policy Objectives

2. The purpose of this Order is to amend the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010 ("the principal Order"), which enforces certain EU obligations to record and report information relating to fishing activity undertaken in EU waters, or by EU fishing boats, and the landing and first sale of fishery products in the EU. These EU obligations are principally contained in the Control Regulation, which is subject to phased implementation.

3. This Order is necessary to enforce the EU obligations set out in Articles 63, 67 and 68 of the Control Regulation, which came into force on 1st January 2011. Articles 63 and 67 require registered buyers and sellers, which are responsible for the first marketing of fishery products and have an annual financial turnover in first sales of fishery products of €200,000 or more, to record and report sales note and take-over declaration data electronically. These Articles supersede Article 5(1) and (4) of Commission Regulation (EC) No. 1077/2008 ("Regulation 1077/2008"), which imposed the same obligation, but applied only to registered buyers and sellers with an annual financial turnover of €400,000 or more. Article 68 requires transporters of landed fishery products to draw up and submit a transport document in certain circumstances. This Article replaces (and largely re-enacts) Article 13 of Council Regulation (EEC) No. 2847/93 ("Regulation 2847/93"), which imposed the same obligation.

4. The objective of the Order is to amend the principal Order to make it an offence to contravene Article 63, 67 or 68 of the Control Regulation or to record or report materially false information in purported compliance with any of these Articles. These offences apply to registered buyers and sellers and transporters of fishery products in Scotland. The Order also amends the principal Order so that Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 are no longer specified as EU recording and reporting requirements, the contravention of which constitutes a criminal offence. It makes further technical amendments to ensure that the new EU legislative provisions (Articles 63, 67 and 68 of the Control Regulation) are cited in place of the old (Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93).

5. 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). Electronic sales notes and take-over declarations are now required from those

registered buyers and sellers of fishery products in Scotland that have an annual financial turnover in first sales of fishery products of €200,000 or more. The Scottish Ministers are required to maintain a register of those that have this prescribed annual financial turnover (which is calculated using the financial turnover for a person for a calendar year and based on the European Central Bank's official average euro foreign exchange reference rate applicable for that calendar year).

6. The method of reporting electronic sales notes and take-over declarations remains the same; they must be transmitted to the Scottish Ministers via one of the electronic reporting systems (ERS) specified by them. The ERS are specified in a form, issued annually to all registered buyers and sellers for the purpose of maintaining the register, and on the Scottish Government's website[1]. This ensures that the ERS are compatible with the electronic sales note system which the Scottish Ministers (and other UK Fisheries Administrations) operate to discharge their EU monitoring and enforcement duties. The Scottish Ministers engaged closely with buyers and sellers on the electronic options available, to provide them with some flexibility in relation to their business needs. Buyers and sellers, not subject to the electronic recording and reporting obligation, can opt to transmit sales note and take-over declaration data via a specified ERS. Otherwise, they must continue to submit them in paper form.

7. Transport documents must be submitted to the Scottish Ministers by submitting them to a local Fishery Office[2], depositing them in a box marked for this purpose at the port of landing or handing them to a British sea-fishery officer. Details of these reporting methods are available on the Scottish Government's website[3].

8. As with the principal Order, it is expedient for references in this Order (other than in Schedule 2) to Articles 62, 63, 66, 67 and 68 of the Control Regulation to be construed as references to those Articles as amended from time to time. This is to cover any technical amendments to those Articles that relate to financial thresholds or time limits imposed. Any such amendments to the EU provisions will be published on the Scottish Government's website and intimated to industry members in writing.

9. This Order also amends the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 and the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010. It makes minor amendments, updating references to EU legislation in the evidential provisions of both Orders, to reflect the fact that Articles 63, 67 and 68 of the Control Regulation are now in force and replace Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93. It also makes minor amendments to the latter Order, updating references to EU legislation in the interpretation provision, to reflect the fact that the relevant EU restrictions on days at sea are now contained in Annex IIA of Council Regulation (EU) No. 57/2011 (which, apart from Appendix 1, re-enacts Annex IIA of Council Regulation (EU) No. 23/2010).

Consultation

10. 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

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1 http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/fish-register.
2 Contact details for which are available on the Scottish Government's website: http://www.scotland.gov.uk/Topics/marine/Compliance/resources/fisheriesoffices.
3 http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/Paperlogbook.

May 2008 on the initial detailed rules on electronic recording and reporting of fisheries data (Regulation 1566/2007, subsequently replaced by Regulation 1077/2008) 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 all buyers and sellers with a form that set out the relevant EU obligations and required them to declare whether or not their annual financial turnover exceeded the then threshold of €400,000 and to state their preferred method of electronic transmission.

Financial Effects

11. There are financial implications for buyers and sellers in Scotland, which are detailed in the Executive Note and Regulatory Impact Assessment prepared in September 2009 (for SSI 2009/304 - http://www.oqps.gov.uk/legislation/ssi/ssi2009/en/ssien_20090304_en.pdf). Marine Scotland has not prepared another RIA, as there are no new costs associated with this Order. The effect of lowering the threshold to €200,000 will bring approximately fifteen new buyers and sellers into electronic submission. This group will largely opt for the web based online submission method given the volumes of sales notes. This service is free to use providing the buyer and seller have access to email and the internet. The RBS Unit in Aberdeen spend a lot of time engaging with buyers and sellers training them on the electronic system and buyers and sellers are also able to approach their local fishery offices for support, particularly any issues of access to the system for buyers and sellers in remote areas.

The Electronic System

12. 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 practice. 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) online data entry of multiple sales notes using an excel spreadsheet (for those businesses without database records); (3) a web-based system, and (4) off-line data entry for single sales note transmission by e-mail. Smaller companies and individuals can use 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.

13. Take-over declarations are rare; none were submitted to the Scottish Government in 2008-10. There is only one means by which take-over declaration data can be transmitted electronically: through www.fish.register.gov.uk/scotland, where a downloadable form is available.

Marine Scotland
Scottish Government
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