

dti

**The Recreational Craft
Regulations 2004**

**Responses to the RCD
Consultation:**

**8th December 2003 –
8th March 2004**

April 2004

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Contents	Page
Introduction	3
Background	4
Summary of responses, STRD's reaction to these and proposed way forward	6
Annex 1 – List of respondents	10
Consultation Code of Practice	11

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Introduction

The recent consultation on Standards and Technical Regulations Directorate's proposal to implement, in the UK, Directive 2003/44/EC aimed to give interested parties an opportunity to comment on our intended implementation plans. The main objective of the directive is to remove technical barriers between Member States by harmonising some further requirements for recreational craft and to include, for the first time, personal watercraft (jet skis) with the design and construction requirements. It is hoped that manufacturers will benefit from this legislation in that they will be able to export their products to a wider market across the European Union.

The consultation document contained a draft Regulatory Impact Assessment (RIA) that evaluated the potential impact of the draft Regulations.

The closing date for the consultation was 8 March 2004. We received 9 responses (names attached at Annex 1). The breakdown of the type of respondents was as follows: individuals: 1, organisations: 8, of which 3 were private, 2 public and 3 voluntary.

We would like to thank respondents for quality feedback. As well as input on policy issues, a number of useful drafting suggestions were received. Responses were well considered and will be of great use in developing our proposals further and ensuring that our stakeholders benefit from clear legislation, as well as guidance and advice as appropriate.

In the main, respondents were supportive of the proposals. The general feeling seemed to be that the consolidation of the existing Recreational Craft Regulations with the amendments required by the amending Directive was the best way forward in that it would provide the clearest way of implementing the Directive. The estimated RIA costs attributable to industry and users were roughly accurate and that the assumptions in terms of the effect of this Directive on the market were reasonable.

BACKGROUND TO THE DRAFT REGULATIONS

The Recreational Craft Directive 94/25/EC, containing essential safety requirements for the design and construction of recreational craft, came fully into effect in the United Kingdom on 16 June 1998. The Directive applies to recreational craft measuring between 2.5 and 24 metres in hull length, intended for sport and leisure purposes. On 12 October 2000, the European Commission presented a proposal for an amendment to the Directive, which has since been adopted, extending the scope to include personal watercraft and adding further essential requirements covering exhaust emissions from propulsion engines and noise emissions from craft.

We propose to make new Regulations that will consolidate the existing Recreational Craft Regulations 1996 and the Recreational Craft (Amendment) Regulations 1998 with the amendments required by Directive 2003/44/EC.

The amendments made by the amending Directive will apply to the same variety of recreational craft as Directive 94/25/EC, whether powered by outboard engines, stern drive engines or inboard engines but with the addition of personal watercraft (propelled by a water jet pump). The exhaust emission requirements take the form of limits of acceptable emissions of carbon monoxide, hydrocarbons, nitrogen oxides and, in the case of diesel engines, particulates.

The noise emission requirements are presented in terms of maximum acceptable sound pressure levels determined from a pass-by test. Directive 2003/44/EC also provides for the use of a "Power Displacement Ratio" formula and a "Froude Number" as a means of compliance with the relevant requirements of the amending Directive. As with other New Approach Directives of its kind, the manufacturer will be able to demonstrate compliance with those requirements of the amending Directive through the technical means provided in harmonised standards.

Furthermore, the objectives of the amending Directive are primarily to remove technical barriers to trade arising out of Member States' differing requirements for personal watercraft as well as for exhaust and noise emissions, but are also to protect the health and well-being of citizens by reducing their overall exposure to pollutants and nuisance arising from the recreational craft. The effect of the amending Directive will be to apply the provisions of the original Directive not only to craft and propulsion engines coming new on to the market but also to existing craft and engines which undergo major modifications and conversions.

The proposed Regulations are largely similar to those which give force in the United Kingdom to other product standard Directives adopted under Article 95 of the Treaty. They also follow the basic formation of the 1996 Regulations, with appropriate amendments to reflect those made by Directive 2003/44/EC.

Member States are required to apply measures from 1 January 2005; those measures will take full effect from 1 January 2006, in the case of products falling under Article 1 (1)(a), compression ignition and four-stroke spark ignition engines and, in the case of two-stroke spark ignition engines, from 1 January 2007 – thus allowing two separate periods of transition.

A Regulatory Impact Assessment (RIA) has been carried out in connection with the amendments made by the proposed Regulations. The RIA has identified three options for transposition of Directive 2003/44/EC and has outlined the risks associated with each option. The options are:

Option 1

Do nothing. Delay transposition of Directive 2003/44/EC until a later date or ignore completely. (This Option would leave the UK in breach of our Community obligations)

Option 2

Implement Directive 2003/44/EC by transposing into UK Law as currently drafted by way of further amending Regulations.

Option 3

Implement Directive 2003/44/EC by Consolidating Regulations

Option 3 is the recommended option on the basis that it will provide users of the legislation with one consolidated set of Regulations covering design and construction of recreational craft (Directive 94/25/EC), design and construction of personal watercraft, limits on noise from craft and limits on exhaust emissions from engines used in craft (Directive 2003/44/EC). The alternative (option 2) would leave the user with two sets of Regulations which would require constant cross-referencing by the user. Option 1 would result in action being taken by the European Commission against the UK and could result in penalties being imposed and the UK forced to transpose the Directive eventually.

The Department of Trade and Industry undertook a public consultation on our proposed implementation plans between 8 December 2003 and 8 March 2004. The consultation document can be viewed at www.dti.gov.uk/strd/rcdcons03.pdf

AMENDING THE RECREATIONAL CRAFT REGULATIONS 1996

RESPONSES TO STAKEHOLDER CONSULTATION ON THE IMPLEMENTATION IN THE UNITED KINGDOM OF DIRECTIVE 2003/44/EC AMENDING THE RECREATIONAL CRAFT DIRECTIVE 94/25/EC (RCD)

Overview of responses by the Department of Trade and Industry (DTI)

This overview provides a short summary of the consultation responses. The order follows that in the DTI's consultation document.

1. Question 1: DTI's recommendation that option 3 be followed

All respondents favoured "option 3" as the clearest way of implementing the Directive. It was agreed that a consolidated set of regulations would be of assistance to both users and enforcers.

2. Question 2: Layout of the proposed Regulations

There was a general expression of satisfaction in relation to the layout of the document. However there were concerns relating to the clarity of its provisions in certain cases. Significant dates when various sections of the Regulations will come into force should be clearly defined. Clarification should also be provided pertaining to the definition of a "new product". Moreover suggestions were made to include either in the Regulations or a guidance booklet a reference to where the published list of certified reference boats and harmonised standards will be available. It was also recommended that abbreviations and scientific terms used in the section on exhaust emission requirements be defined or explained.

3. Question 3: Another way of implementing the Directive

No other way of dealing with the issue was identified.

4. Question 4: Accuracy of estimated RIA costs attributable to industry and users

It was widely agreed that the estimated RIA costs attributable to industry and users were roughly accurate. It was agreed that the cost of testing would be reduced in the long term through the establishment of a reference boat database. This database should be international thereby providing a wider variety of reference boats. It was suggested that costs could be spread between manufacturers if a manufacturer whose boat has been certified and added to the database receive payment for this and those referring to the database pay a charge to do so.

5. Question 5: Are the RIA assumptions in terms of the effect of this Directive on the market reasonable?

Respondents agreed that the RIA assumptions in terms of the effect of this Directive on the market were reasonable. It was assumed that 50% of new craft would be covered by the reference boat database and it is understood that, over time, as more different designs of craft are certified, this figure would increase. Every effort should therefore be made to develop the database in order to reduce the costs of testing incurred by the industry.

However the European Recreational Marine Industry Group is of the opinion that the RIA report lacks balance and that the summary focuses on the negative aspects without any balancing positive comments. It emphasised the fact that the proposition for this Directive was industry driven and that they realised that, although this Directive would be good for the overwhelming majority of the industry, those who build or serve only a small local market might see it otherwise.

Highlight of concerns raised by respondents

Effects of the RCD on the traditional narrowboat industry: It is believed that it will be difficult to implement these Regulations to the majority of inland waterways due to the variety of these craft and the lack of knowledgeable and trained staff. The inhibitive costs of testing for engine manufacturers, including the one traditional engine manufacturer is likely to lead to the death of the cottage industry. However it was also pointed out that virtually all narrowboats are replicas built of traditional materials and would therefore be exempt from the RCD.

Retrospective application of engine exhaust emissions: It may be interpreted that there could be a retrospective application of engine exhaust emission requirements to owners of engines not previously subject to the Regulations having undergone a "major engine modification" and it is believed that there is little trading or environmental benefit in compelling the owner of an existing engine to be subject to testing in respect of engine exhaust emission requirements in the event of an existing craft having an engine replacement or major engine modification. The principle of non-retrospection is therefore advocated.

Excluded products: Original and individual replicas of historical propulsion engines are excluded under the Regulations. However producers of replica engines "in series" will be caught by the provisions. This may be a threat to the companies producing such vintage engines and it is suggested that each engine built by the companies concerned be considered as "individual replicas".

Introduction of the EC type-examination conformity assessment to Category D boats: The idea of introducing Module B for conformity assessment for

Category D boats was welcomed. However it is thought that the extension of the modular choice will have limited impact on the grounds of costs. It is therefore proposed that industry-led schemes aimed at supporting builder self declarations be promoted as an alternative in respect of Category D boats to remove inconsistencies currently existent in that area.

Post construction assessments: Concerns were raised regarding the introduction of “post construction assessments”. It is believed that Category D builders will have to incur significant costs in the event of Trading standards determined the builder not to have fulfilled his responsibilities in respect of an existing class of vessel. Same would apply to owners of self-build craft that become subject to the Regulations when sold within five years of manufacture. This measure is likely to drive builders further “underground”.

Enforcement: It is considered that the “reactive” approach to regulation by Trading standards Departments is not effective, especially in respect of the narrowboat sector. It is suggested that it would be in the public interest if the enforcement regime helps ensure public safety and customer satisfaction and confidence by working in partnership with relevant bodies to actively promote a fair trading environment in respect of new boats covered by the RCD.

Standards and Technical Regulations Directorate’s reaction to these comments and proposed way forward

The Department has noted with interest the issues raised by the respondents and will do its best to implement as far as possible the suggestions. STRD is working closely with our Legal Section to try and achieve the necessary clarity for the understanding the Regulations. We intend to include footnotes to provide the necessary explanations. However, should this fail, we intend to provide adequate advice in the guidance booklet for the application of these Regulations before the Regulations come into force and certainly no less than twelve weeks beforehand.

The DTI is aware of industry’s concerns related to the introduction of legislation to limit engine emissions. However every effort has been and will be made to ensure that local business is protected. Original and individual replicas of historical engines are excluded under the Regulations. Only vintage engines produced “in series” will be caught by the Regulations. The Department is also in favour of controlling imports of engines of poor quality responsible for causing pollution. It is also hoped that manufacturers will benefit from this legislation in that they will be able to export their products to a wider market across the European Union.

Currently, Category D boats need only be self-certified by the manufacturer. It is hoped that the introduction of the EC- type examination through specific modules and the involvement of third party certification, manufacturers would ensure the production of safer boats and remove inconsistencies existing in this

particular area. We will therefore promote industry-led schemes to achieve this goal.

“Post construction assessment” was not permitted under the original RCD. In providing this facility to importers of craft from third countries and the placing on the market of self-build craft within 5 years of manufacture, it is hoped that more compliant boats, and therefore safer ones, will be in circulation.

Finally we intend to work in close partnership with Trading Standards Departments, the enforcement authority in the UK, to ensure that the legislation is being applied correctly and adequate sanctions are taken against non-compliant craft.

We will ensure that relevant local authority Trading Standards Departments are aware of their responsibilities as enforcement authorities with regards to the application of the Recreational Craft Regulations (RCR) as it is vitally important that Trading Standards Officers understand what their obligations are in respect of the safety of new boats.

As with any legislation of this type, we will continue to liaise closely with LACORS, the co-ordinating body for Trading Standards and ensure that, where possible, Trading Standards have an understanding of the requirements of the RCR and their obligations.

List of respondents

Name
Mr Michael Clarke
Calcutt Boats Ltd
RN Diesel Engine Co. Ltd
EU Recreational Marine Industry Group
British Marine Federation
Firemaster Extinguisher Ltd
The British Shooting Association
Inland Waterways Association
Association of Inland Navigation Authorities

Consultation Code of Practice:

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.