

**CONSULTATION ON PROPOSAL
FOR A DIRECTIVE ON
RECREATIONAL CRAFT AND
PERSONAL WATERCRAFT**

Government Response to the
Consultation

MAY 2012

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1) Executive Summary

The Government would like to thank all those who responded to the consultation. We appreciate the time you have taken to let us have comments.

The Government has received nine responses to the Consultation.

The main issues raised in the response to the consultation are:

- The burden on private importers that use post construction assessment is too great
- Post construction assessment should be available to all economic operators as well as private importers
- Engine marinisers will struggle in some cases to meet the requirements for engines
- The proposal must clarify what is meant by “partly completed craft”.
- This in turn leads to a need to clarify what is meant precisely by “watercraft built for own use”
- Support for the view that some or all types of kayaks and canoes can be included within scope
- Self build hobbyists expressed concern at the adverse impact they see to their hobby

The Government shares a number of concerns that were expressed in the responses received, specifically we:

- agree that the Proposal places too great a burden on private importers;
- recognise the need to ensure that engine marinisers are not penalised as a result of the reduction in the maximum exhaust emissions or the new compliance assessment requirements for marine engines that are introduced by the proposal;
- agree that the proposal needs to clarify what is meant by “partly completed craft” as a priority. This clarity is needed in order to be certain what is meant in turn by “watercraft built for own use”.

- We need to consider whether the proposal to include some canoes and kayaks in the scope is viable.

2) Introduction

Although there was a relatively low response rate to the consultation, the responses received covered a wide range of interests within the recreational craft sector that will be affected by the proposal. Responses were received from trade associations, central government, a standards convenor, small, medium and large businesses and individuals. The responses covered issues such as exhaust emissions, noise emissions, watercraft built for own use, partly built watercraft, post construction assessment, design categories, canoes and kayaks, private importers, amateur boat builders and definitions for recreational craft.

The Consultation was launched to seek views upon the European Commission's "Proposal for a Directive on Recreational Craft and Personal Watercraft" ('the Proposal') published in July 2011. The Government had previously consulted informally with a small number of key stakeholders and has taken part in a number of meetings at EU level with other Member States and stakeholders where the draft proposal was discussed. Since the Proposal was published, the Government has also participated in a number of meetings with stakeholders to discuss the issues it raised. The Government issued the formal consultation document on the Proposal on 11th November 2011. This consultation closed on 11th February 2012. The response to the Consultation is set out in more detail in this document.

3) Summary of Responses

Exhaust & Noise Emissions

This caused much concern for several respondents. The emerging view is that while it is technically possible to design engines capable of meeting the targets for the reduction in exhaust emission limits set out in the Proposal, this will not be easy to achieve and the cost involved in this process could be disproportionately high. For this reason, we welcome the proposal to extend the transitional period for SMEs being by a year. However, one respondent said that even with the longer transitional period, the cost of bringing engines into compliance with the Proposal could be prohibitive. The problem is that the Proposal requires engines that are marinised to be certified to the standards set out in the Recreational Craft Directive ('RCD'). Engines that are marinised have already been certified to the standards set out in the Non-Road Mobile Machinery Directive, but the requirement for them to be certified a second time might be too costly for some SMEs. Another respondent said that the new requirements for exhaust emissions were the lowest achievable using current technology and should not be reduced further.

One issue mentioned was that of boat builders using old engines. Old engines may not meet the new requirements set out in the Proposal, but have already been placed on the market. Some boat builders see old engines as more reliable than new ones and they are cheaper. Prohibiting the trade in old engines might undermine the new build market for some watercraft.

Noise emissions can only be measured when the engine is installed in the craft, so the CE marking of an engine would not necessarily ensure that noise emission requirements were met. Engine manufacturers have to take some responsibility for the engines they produce, but they do not need to have full knowledge of the craft into which an engine is to be installed.

Watercraft Built for Own Use

The definition of "Watercraft built for own use" in the Proposal caused concerns for several respondents. An amateur boat builder thought that people involved in non-commercial activities should be exempt from the Proposal and able to sell a craft they have built themselves immediately, when it is finished, without having to wait five years before they were exempted. It is possible that the Proposal might prevent an amateur boat builder from selling the craft, if there was a need to sell a boat for economic reasons or if the boat is no longer required or; the boat builder is no longer able to make use of the boat. It was noted that the Proposal does not cover the activity whereby a group of individuals build a boat as a group project. However, when it comes to be placed on the market, any person acquiring the watercraft has a right to expect it to be safe. It is recognised that the majority of "amateur" boat builders are building quality products that are safe. However, there will always be a minority of people or organisations attempting to circumvent the conformity requirements of the RCD and who, as a result are building products which are not safe or

who claim to be self building organisations when they are in fact commercial operations. The issue of “kit boats” is not dealt with in the Proposal. A kit boat is where a person buys some or all of the parts from a manufacturer and then completes the craft at home as a hobby self build. One respondent was concerned that the wording in the Directive could make this form of activity too expensive for most people by requiring the use of conformity assessment procedures that involve the services of a notified body. This is because of the clear proposal that “watercraft built for own use” must not have been partly or completely built by an economic operator.

Partly Completed Watercraft

The term “partly completed watercraft” is not defined in the Proposal. However, the term appears several times in the text and it is one that is widely recognised in the recreational craft industry. In the UK canal boat industry, these are sometimes termed “sail aways”. A person will buy the “sail away” as a partly completed craft and then complete it themselves. This practice is well known in several other Member States. The Proposal does not make it clear whether the builder of the sail away has to comply with the Directive. However, it could be argued that if the watercraft can be put into service, i.e. used, then it should be safe and meet the essential requirements that apply to it at that time. One respondent said that if builders of partly completed watercraft had to comply with the RCD then the cost of completing the craft would rise considerably which could deter potential buyers, presumably of the view that all craft would need to be completed before being supplied to the new owner. While this mainly affects canal boats it also affects other craft such as small motor boats, dinghies and yachts.

Maritime Legislation

- There were a number of concerns raised regarding inconsistency with international maritime legislation. One respondent said that the exhaust emission limits should follow the international standards set in MARPOL 73/78 Annex VI by the International Maritime Organisation. It was noted that some craft are made available as both “recreational craft” and “working boats”.

- There is an overlap between craft for professional use and charter craft as defined under the RCD and other maritime legislation. The definition given in Article 2 of the Proposal should be clearer. It seems that some craft in the scope of the RCD are also in the scope of the Maritime Labour Convention 2006, which concerns the design of craft ordinarily engaged in commercial practice. The view that the end use of craft is not necessarily known by the manufacturer is a valid one; however, it is for a manufacturer to construct their craft such that the build is appropriate for the legislation applicable for the intended market.

- There needs to be some co-ordination of the requirements of, and the differences between, the two legislative regimes where a watercraft may fall within either regime. While ultimately it is for the boat builder to design craft that can meet the in service legislative requirements for professional or leisure use as applicable, it would be helpful if the legislative requirements were able to support a common design solution, or one a lesser set of the other rather than completely divergent as inferred.

- Views were expressed that Article 2(2)(a)(viii) of the RCD is not clear, particular comments being:

what does “in particular” mean? and;

This is important because the proposal is worded to say that the Directive will not apply to watercraft specifically intended to be crewed and to carry passengers for commercial purposes. So the reference to Directive 2006/87/EC (Inland Waterways) and Directive 2009/45/EC (Safety Rules and Standards for Passenger Ships) which apply to passenger craft with ‘more than 12 passengers’ does not seem necessary.

- Concerns were raised that the definition of “a passenger” in the Proposal needs to be clarified, we agree.

- Views were expressed there should be additional goals for prevention of pollution from discharge as set out in MARPOL; this could be addressed in the same way as with SOLAS, COLREGS and CEVNI in Annex I 5.7 for navigational lights. However, while this view is certainly valid for ocean going craft, it is questionable whether it is appropriate for all craft in the scope of the RCD. The wording used in Annex I 5.8 can be applied to all craft without being too onerous to manufacturers.

Post Construction Assessment

Concerns were raised regarding the wording used for post construction assessment (PCA). Several respondents said that as currently worded the Proposal will make it too onerous for the private importer to make use of PCA. The wording of the Proposal means that a private importer will have to provide a notified body with supporting documentation, including technical documentation, to make use of PCA. Generally, private importers do not have access to the resources or necessary expertise to provide this technical documentation. Another respondent said that PCA should be extended to liberalise some commercial activities, which would otherwise be made too complex and this would have a detrimental affect on some businesses. The current directive does allow some commercial activities using PCA but some stakeholders take the view that this is a loophole in the directive which provides business with an easier route to conformity. BIS does not agree with this view. As well as simplifying the process for private importers, PCA should also be available for commercial activities. BIS consider that if PCA is applied properly it will not be cheaper than alternative quality control approaches where individual assessment of each product is not required.

Design Categories

Two respondents said that there were problems with the design categories. One said their view was that category C has an excessively wide range of wave heights. However most craft designed for category C are never used in wave heights over one metre. This means that the same requirements are placed on boats designed for ocean going journeys as for boats that are only likely to be used in coastal waters or inland waterways. BIS believe that the categories in the Proposal, which are unchanged from the current RCD, allow the appropriate conformity assessment procedure to be chosen; manufacturers are required to

provide detailed instructions for owners as to how to use the product that will provide the additional detail required.

Canoes and Kayaks

In the Proposal the exclusion for canoes and kayaks will be for those propelled by hand paddle only. One respondent said that it would be possible for hand propelled craft to meet the essential requirements that applied to them. They further suggested that in their view, all canoes and kayaks could be included and said that a standard existed to cover stability and buoyancy. These arguments, although valid could cover a range of craft currently outside the scope. It is not possible, or appropriate, for the RCD to cover everything. The General Product Safety Directive would cover any consumer product not covered by a specific directive, e.g. watercraft outside the scope of the RCD. The General Product Safety Directive requires products to be safe but with no specified conformity assessment requirements; generally the relevant RCD essential requirements, but not administrative requirements, would be applicable and would be cheaper for a manufacturer. The burden imposed by legislation needs to be proportionate and justifiable. The definition used in the Proposal should be clear as to what is and what is not covered.

Private Importers

The Proposal introduces the concept of “private importers” into the RCD, meaning, as the currently text of the RCD does not mention private importers, that the Proposal goes beyond making only the changes that are necessary to align the RCD with Decision 768/2008/EC . A number of concerns were raised by respondents about the responsibilities for private importers in particular for post construction assessment (see above). BIS agree that the obligations for private importers are too onerous. The comments made by respondents support our view that these should be simplified.

Amateur Boat builders

There are a large number of individuals that make boats in UK as a hobby. These craft will either be for their own use or be sold privately to cover the cost of the build. Concern was raised by two individuals that the wording in the Proposal will make it too expensive for “amateurs” to build boats in future. This is linked to the concerns over “watercraft built for own use” and “partly completed watercraft” mentioned above.

4) Summary of Government Response

With regard to the concerns raised about the certification of engines, we will try to ensure that the wording used in the proposal makes clear that there is no requirement for additional certification of engines which have already been certified as complying with the applicable harmonised standards laid down in the relevant EU Directives.

The concerns raised about post construction assessment (PCA) reflect the Government's own concerns and we will continue to make the case for PCA to be less onerous for private importers and for PCA to be open to all business whether private or commercial.

Although a good case has been made for including canoes and kayaks within the scope of the Directive, the Government believes this would be an unnecessary burden on business. We believe the General Product Safety Directive provides an adequate safety regime for canoes and kayaks.

Although we accept there are concerns about the design categories, our view is that changing the current format would cause confusion. We believe that manufacturers should make it clear in the owner's manual what specifically the craft is designed for and the conditions in which it is intended to be used.

The comments made regarding "partly completed craft" confirm our own view that the Directive should clarify what is meant by this term. This in turn should make it easier to explain what is meant by "watercraft built for own use".

5) Next Steps

The Government will take forward some of the views expressed in the responses to the Consultation during the negotiation of the Proposal. We will be seeking clarification of the wording suggested where this is ambiguous to ensure we are clear as to the meaning intended. It is not possible for BIS to change the Proposal in response to the concerns raised in the Consultation. . However, we will raise these concerns with other stakeholders during the course of the negotiation and will work with them to propose and develop any amendments which could further address these concerns. We will discuss with other stakeholders, amongst other issues, the need to:

- Make the case for the post construction assessment to be available for private importers and all economic operators;
- Reduce the administrative burdens that impact upon private importers

- Ensure there is a clear understanding of what is meant by “partly completed watercraft” as this in turn affects the definition given for “watercraft built for own use”.
- Ensure that the concerns of engines marinisers are fully recognised
- Examine whether the conformity assessment modules can be more flexible for boat builders

6) List of respondents to the Consultation

- Andrew Blyth
- Beta Marine
- British Marine Federation
- David Burdett
- Ian Skilton
- Maritime and Coastguard Agency
- Michael Clarke
- Perkins Diesels
- Royal Yachting Association

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