



# Natural Environment and Rural Communities Act 2006

## 2006 CHAPTER 16

### PART 3

#### WILDLIFE ETC.

##### *Pesticides harmful to wildlife*

#### **43 Possession of pesticides harmful to wildlife**

- (1) A person is guilty of an offence if he has in his possession a pesticide containing an ingredient that is prescribed for the purposes of this section by an order made by the Secretary of State.
- (2) The Secretary of State may not make an order under subsection (1) unless he is satisfied that it is necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm.
- (3) It is a defence for a person charged with an offence under this section to prove that his possession of the pesticide was for the purposes of doing anything in accordance with—
  - (a) provision made by or under the Poisons Act 1972 (c. 66);
  - (b) regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48);
  - (c) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations;
  - (d) the Plant Protection Products Regulations 2005 (S.I. 2005/1435) or any regulations replacing those regulations.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both).

- (5) The court by which a person is convicted of an offence under this section may order the forfeiture of the pesticide in respect of which the offence was committed.
- (6) The power to make an order under subsection (1) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State must take such steps as are reasonably practicable to bring information about the effect of an order under subsection (1) to the attention of persons likely to be affected by the order.
- (9) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4) to 51 weeks is to be read as a reference to 6 months.

#### **44 Enforcement powers in connection with pesticides**

- (1) An inspector may—
  - (a) enter any premises if he has reasonable grounds to suspect that he may find there evidence that an offence is being committed under section 43,
  - (b) require any person whom he reasonably believes has information about the formulation, effects or use of any substance found on the premises to give him that information, and
  - (c) seize any substance found on the premises, if he has reasonable grounds for believing that it is evidence of an offence under section 43.
- (2) “Inspector” means—
  - (a) a person authorised in writing by the Secretary of State to exercise the powers under this section in relation to England;
  - (b) a person authorised in writing by the National Assembly for Wales to exercise the powers under this section in relation to Wales.
- (3) An authorisation under subsection (2) is subject to any conditions or limitations specified in it.
- (4) Schedule 2 to the Food and Environment Protection Act 1985 (officers and their powers), other than paragraph 2A(1)(b) of that Schedule, has effect with respect to inspectors as it has effect with respect to persons authorised to enforce Part 3 of that Act.
- (5) Subsections (6) and (7) apply where an inspector seizes a substance under subsection (1)(c).
- (6) The inspector must give to a person on the premises, or affix conspicuously to some object on the premises, a notice stating—
  - (a) what he has seized and the ground for seizing it, and
  - (b) the address for service for any claim for the return of the substance.
- (7) The inspector—
  - (a) may retain the substance for so long as is reasonably necessary for the purposes of any investigation or proceedings in respect of an offence under section 43;

(b) subject to any order for forfeiture under section 43(5) or any claim made within the relevant period by a person entitled to the return of the substance, may retain the substance or, after the relevant period, destroy or otherwise dispose of it.

- (8) “The relevant period” means the period ending 28 days after—
- (a) any proceedings in respect of an offence under section 43 are finally determined, or
  - (b) if no such proceedings are brought, the time for bringing such proceedings expires.

#### **45 Codes of practice**

- (1) The Secretary of State may—
- (a) issue a code of practice in connection with any of the provisions of section 44 or Schedule 2 to the Food and Environment Protection Act 1985 (c. 48) as applied by section 44(4), and
  - (b) revise or replace such a code.
- (2) An inspector must have regard to any relevant provision of a code when discharging any function under any provision mentioned in subsection (1)(a).
- (3) But an inspector’s failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.
- (4) A code—
- (a) is admissible in evidence in any proceedings, and
  - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.

#### **46 Interpretation**

- (1) This section has effect for the interpretation of sections 43 and 44.
- (2) “Pesticide” means—
- (a) a pesticide as defined by section 16(15) of the Food and Environment Protection Act 1985;
  - (b) anything to which Part 3 of the 1985 Act applies (by virtue of section 16(16) of the Act) as if it were a pesticide.
- (3) “Wild bird” and “wild animal” have the same meaning as in Part 1 of the Wildlife and Countryside Act 1981 (c. 69).
- (4) “Premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.