

EXPLANATORY MEMORANDUM TO
THE PLANT PROTECTION PRODUCTS (SUSTAINABLE USE) REGULATIONS 2012

2012 No. 1657

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.

2. Purpose of the instrument

2.1 This instrument transposes the requirements of Directive 2009/128/EC on the sustainable use of pesticides (“the Directive”) for the United Kingdom. It includes requirement for the United Kingdom to adopt a National Action Plan (NAP) and provisions aimed at achieving the sustainable use of pesticides by reducing risks and impacts of their use on human health and the environment. Corresponding domestic regulations will be revoked by this instrument.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative background

4.1 The EU regime for plant protection products (PPPs) has become increasingly harmonised over the years. Under the Thematic Strategy for Pesticides three recent key pieces of legislation have taken this process forward substantially;

- authorisation for marketing of products is, since June 2011, governed by Regulation (EC) No 1107/2009;

- limits on the amounts of pesticides in food are governed by Regulation (EC) No 396/2005, which took effect in 2008 and which lays down maximum residue levels (MRLs) and

- controls on the use of plant protection products, which are currently regulated nationally, to be governed by Directive 2009/128/EC on the sustainable use of pesticides from 26 November 2011.

4.2 The Plant Protection Products (Fees and Charges) Regulations 2011 set fees and charges to recover the government’s costs of implementing these three pieces of legislation.

4.3 To support the enforcement of Regulation (EC) No 1107/2009 the

- Plant Protection Products Regulations 2011; and
 - Plant Protection Products Regulations (Northern Ireland) 2011
- took effect from 24 September 2011

4.4 This instrument transposes the Directive. It applies to pesticides that are that are PPPs which are, broadly speaking, agricultural pesticides used to protect plants from pests and diseases, used in agriculture, the amenity sector, and domestic gardens. The Directive will be extended to cover pesticides that are biocidal products (such as non-agricultural pesticides, disinfectants and preservatives) in the future.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Directive establishes a framework to promote good and best practice in the storage, use and disposal of PPPs, and their packaging. PPPs are widely used in agriculture and other sectors to control pests, diseases and weeds. If used incorrectly they could cause serious harm to people, domestic and wild animals, drinking water and the environment. Regulation is necessary to manage these health and environmental risks.

7.2 Measures aimed at the reduction of these risks include: the establishment of NAPs; compulsory testing of application equipment; provision of training for, and arrangements for the certification of, operators, advisors and distributors; a ban (subject to limited exceptions) on aerial spraying; provisions to protect water, public spaces and conservation areas; the minimisation of risks from handling, storage and disposal; and the promotion of low input regimes (including Integrated Pest Management (IPM)). Progress is to be measured through the use of 'risk indicators.

7.3 The UK already has a longstanding and robust legislative framework governing PPP use covering many of the same areas as the Directive. This must be replaced by arrangements under the European regime. The human health and environmental risks associated with the use of pesticides are a matter of concern for some members of the public and non-governmental organisations.

7.4 The Plant Protection Products (Sustainable Use) Regulations 2012 (the Regulations) includes provisions requiring that:

- the Government draws up an NAP describing arrangements for implementing the Directive so as to reduce the risks and impacts of PPP use and encouraging the development and introduction of alternative approaches and techniques. The NAP will be drawn up with the involvement of relevant stakeholder groups and shared with the European Commission and other Member States by 26 November 2012.
- those who use PPPs in their work have a certificate showing that they have been trained for the job. Existing UK legislation relating to PPPs, revoked by this instrument, already makes this a requirement for the majority of people who use PPPs in their work.
- businesses that sell PPPs for use in;
 - work situations (professional products), and
 - domestic or non-work situations (non-professional products)

employ sufficient people who have a certificate showing that they have been trained to provide information on the use of these products and associated risks to those who purchase them. These businesses are already required, under existing UK legislation relating to PPPs, to ensure they train their staff. Those who sell professional products must have appropriate training certificates. These requirements will also appear in this instrument so that people purchasing these products can be given information on their use and how to reduce risks in order to protect human health and the environment. Businesses that employ fewer than 10 people and sell certain types of lower risk products for use in non-work situations will not have to comply with this requirement.

- those who use PPPs in their work (professional products) must have a certificate showing they have been trained to use them, in order to be able to purchase them after 26 November 2015. The certificates that people already hold under the existing UK system will satisfy the requirement in this instrument. Certain groups who are currently exempt from the certification requirement, such as users who qualify for an age-related exemption, will have to get certificates by this date. Arrangements are being developed to enable this to happen in the least burdensome manner.
- those who own equipment that is used to apply PPPs must ensure that it passes inspection, in order to ensure that it is working properly, at specified intervals. This is intended to prevent malfunctioning equipment from leaking, spilling or applying incorrect doses. All equipment must have passed inspection once by 26 November 2016 and must pass inspection at specified intervals from then on. The Government must designate a body which is responsible for administering the official inspection regime. Handheld and knapsack equipment does not have to be inspected but must be regularly checked by the operator to ensure it is working properly.
- those who apply PPPs from aircraft must have a permit to do so and such permission will only be granted in limited circumstances. The UK has existing arrangements for aerial spraying which, to the extent required by the Directive, will be replicated in this instrument.

- those who use, handle or store PPPs must take all reasonable precautions to protect human health and the environment, Applications must be confined to the area intended to be treated and products stored in areas constructed so as to prevent unwanted releases.
- Where there is a risk to water and where there is a choice of products users are required to, so far as is reasonably practicable, give preference to particular types of products which pose a lower risk to water.
- Pesticide users ensure that amounts used and the frequency of use is as low as reasonably practicable in the following cases: use in certain listed areas used by the public (particularly by sensitive or ‘at risk’ groups of people); use in conservation areas; use on certain man-made surfaces close to or with a high risk of run-off to water; or use in recently treated areas which will be accessible to agricultural workers.
- The Regulations also prohibit;
 - the combining or mixing for use two or more PPPs unless certain conditions are met and;
 - the combining or mixing for use two or more PPPs which are anticholinesterase compounds (certain types of products that can cause acute nerve toxicity) unless such a mixture is expressly permitted by the conditions of an authorisation.

These restrictions exist in current UK legislation and it is necessary to repeat them in this instrument in order to continue to prevent practices that might pose significant risks to human health.

7.5 These measures are intended to ensure that those who work with PPPs are competent for the job, that their equipment is fit for purpose, that they have the necessary information, and take the necessary precautions, to minimise the risks. Some of the measures described above are new statutory requirements (such as the equipment inspection scheme, although there is already an industry-led non-statutory scheme with a high take up) and some are very similar to those already in operation under the UK’s existing domestic laws on PPPs (such as the training and certification of people who work with PPPs). Where similar arrangements already exist in the UK, these have been replicated to the extent required by the Directive, so as to provide a seamless transition without unnecessary changes for UK businesses. The existing domestic laws on PPPs will be revoked by these new Regulations.

8. Consultation outcome

8.1 A full 12 week formal public consultation was carried out between February and May 2010. The consultation was structured around a series of 40 questions, relating to a broad spectrum of potential implementation options from “do nothing” to “strengthen regulation wherever possible” over the range of provisions covered in the Directive. A large volume of information and views were submitted; a total of 306 responses were received from organisations and individuals across the agricultural, environmental and

other sectors, including 126 members of the public. The responses were broadly polarised in that campaigning charities and non-governmental organisations wanted to see significantly strengthened regulation while industry organisations wanted to maintain the level of regulation at, or close to, the status quo.

8.2 No persuasive evidence was put forward to support the need for greatly strengthening the level of regulation of PPP use. The Government considered that the UK's longstanding and rigorous regulatory regime for PPPs and other existing statutory and voluntary controls placed it in a good position with respect to many of the areas covered by the Directive. Therefore, only those changes necessary to ensure the UK is compliant with EU law have been made.

9. Guidance

9.1 Guidance notes for those affected by the new requirements, and for enforcing authorities, will be available when this instrument comes into force. There is an existing Code of Practice for using PPPs which contains relevant guidance and a new Code may be issued in due course.

10. Impact

10.1 The impact on business is estimated at £15.75m over ten years. The majority of these costs (approx £12m) arise out of the requirement for owners of PPP application equipment to make sure that certain equipment they use passes inspection at regular intervals, starting in 2016.

10.2 There is no cost impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business. It applies to all farms and contractors that use PPPs, therefore most of the affected businesses will be small, or even micro-businesses. They cannot be exempted because the legislation is aimed at regulating those industries in particular and at minimising risks that arise irrespective of the size of the business.

11.2 All decisions have been taken with a view to minimising the effect on these businesses, including approaches such as;

- adopting a "business as usual" policy where possible taking into account the requirements of the Directive, and attempting to replicate the existing regime as far as possible.

- including a requirement that people take “reasonable precautions” rather than introducing certain prescriptive new measures, allowing businesses the flexibility to decide what measures are necessary based on individual circumstances, rather than a need for familiarisation with a raft of complex requirements.
- using all available derogations.
- deeming existing UK requirements as satisfying equivalent or related requirements under the Directive wherever possible, so that businesses do not have to implement unnecessary changes (for example, existing training certificates will be deemed to meet the minimum requirements of those introduced under the Directive)

11.3 The only additional decisions taken to minimise the impact in relation to the size of businesses was to use a derogation for micro-distributors (those sellers of non-professional products which employ fewer than ten staff and with a turnover of less than 2m Euros per annum) exempting them from the requirement to employ certificated staff.

12. Monitoring & review

12.1 A review clause has been included in the Regulations in line with the Government’s Guiding Principles for EU legislation. The Secretary of State will, from time to time, carry out a review of the operation of these regulations in England and Wales, having regard to how the Directive has been implemented in other Member States. The Secretary of State will publish a report setting out the conclusions of that review.

12.2 The report will;

- set out the objectives of the Regulations; in relation to the reduction of risks and impacts associated with the use of pesticides on human health and the environment.
- assess the extent to which those objectives have been achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

12.3 The first report under this regulation will be published before the end of the period of five years beginning with the date the regulation comes into effect.

13. Contact

13.1 Caroline Kennedy at the Health and Safety Executive (HSE) Tel: 01904 455706 or email: caroline.kennedy@hse.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

Directive 2009/128/EC

This Transposition Note is for the implementation of Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for community action to achieve the sustainable use of pesticides.

Introductory Note:

These Regulations are called the Plant Protection Product (Sustainable Use) Regulations 2012.

These Regulations do more than is necessary to transpose the Directive by including a requirement for all users of plant protection products authorised for professional use to hold a certificate (regulation 8(1) and (2)).

Article	Objective	Implementation	Responsibility
Article 1	Sets out the aim of the Directive which is to establish a framework to achieve a sustainable use of pesticides by reducing the risks and impacts of pesticide use on human health and the environment.	While no specific transposition of this Article is necessary, the Regulations cover its subject matter.	
Article 2	Scope	While no specific transposition of this Article is necessary, the Regulations cover plant protection products that are pesticides.	
Article 3	Defines the terms used in the Directive.	Regulation 2	Secretary of State
Article 4	To ensure that Member States (MS) adopt National Action Plans (NAP) with quantitative objectives, targets, measures and timetables to reduce risks and impacts of pesticide use on human health and the environment.	Regulation 4	Secretary of State
Article 5	Requires that appropriate training is made available for professional users,	Regulation 5	Secretary of State

	distributors and advisors. Requires that training is provided by designated bodies and that certification systems are established.		
Article 6(1)	Requires distributors to have sufficient staff available at the point of sale. Derogation for micro distributors available.	Regulation 9(1) – (3) and Schedule 1	Secretary of State
Article 6 (2)	Requires the sale of pesticides authorised for professional use to be restricted to persons who are certificated to use such pesticides.	Regulation 9(5) and (6)	Secretary of State
Article 6 (3)	Requires distributors selling pesticides to non professional users to provide general information regarding risks to human health and the environment.	Regulation 9(4)	Secretary of State
Article 8	Requires bodies responsible for implementing inspection systems to be designated and for certain pesticide application equipment in professional use to be subject to inspections at regular intervals. Only equipment that has passed inspection to be in used after November 2016.	Regulations 6, and 11-14.	Secretary of State
Article 9(1)	Requires that aerial spraying is prohibited.	Regulation 15 (1)	Secretary of State
Article 9(2)	Allows derogation from prohibition of aerial use in certain special cases.	Regulation 15(2) and Schedule 2 (7),(8)	Secretary of State
Article 9(3)	Requires authorities to	Regulation 7 and Schedule 2	Secretary of State

	be designated for establishing the specific conditions by which aerial spraying may be carried out and that aerial spraying permits shall specify measures for warning residents and bystanders and to include measures to protect the environment in the vicinity of spraying.	(8)(d)	
Article 9(4)	Requires those wishing to apply a pesticide by aerial spraying to submit a request for an aerial spraying permit to the competent authority in advance of any application.	Regulation 15(2) and Schedule 2(3)	Secretary of State
Article 10	MS to include certain provisions in the NAP	Transposition is not necessary.	
Article 11	Requires that MS ensure that appropriate measures to protect the aquatic environment and drinking water supplies from the impact of pesticides are adopted. Measures shall include the following:	Regulation 10	Secretary of State
Article 11(2)(a)	Giving preference to certain products	Regulation 10(3) (4)	Secretary of State
Article 11(2)(b)	Giving preference to the most efficient application techniques	Regulation 10(1)(a) and (b).	Secretary of State
Article 11(2)(c)	Requiring the use of mitigation measures such as buffer zones and safeguard zones to minimise off site pollution.	Transposed by Regulation 12 of the Plant Protection Product Regulations 2011 (S.I 2011/2131), and Regulations 10(1)(a) and (b), 10(5) and in England and Wales by section 93 of the Water Resources Act, 1991.	Secretary of State

Article 11 (2)(d)	Requiring that pesticide applications should be reduced or eliminated on certain man-made surfaces where there is a heightened risk of water pollution.	Regulation 10(1)(c) and 10(2)(e) and(f)	Secretary of State
Article 12	Requires the reduction of pesticide use or risks in specific areas. Member States to ensure that the use of pesticides is minimised or prohibited in specific areas.	Regulation 10 (1)(c)	Secretary of State
Article 13 (1)	Requires that necessary measures are adopted to ensure that storage, handling, dilution, mixing cleaning and disposal operations do not endanger human health or the environment.	Regulation 17 (1)-(4) and (6).	Secretary of State
Article 13 (2)	Requires that necessary measures are taken regarding pesticides used by non-professional users to avoid dangerous handling operations.	Necessary measures are already in place. The availability of pesticides to the non professional sector is already limited by the existing regulatory process pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.	Secretary of State
Article 13(3).	Requires that storage areas for pesticides for professional use are constructed in such a way as to prevent unwanted releases.	Regulation 17(5)	Secretary of State
Article 14	Requires MS to describe in the NAP how they ensure that	Regulation 4(c)	Secretary of State

	the general principles of integrated pest management as set out in Annex III of the Directive are implemented by professional users.		
Article 15	Requires MS to calculate harmonised risk indicators, identify trends and identify priority items.	Transposition is not necessary.	
Article 16	Requires the Commission to report.	Transposition is not necessary.	
Article 17	Requires penalties to be established for infringements of national provisions.	The offence provision is regulation 24 and the enforcement and related provisions are set out at regulation 19 – 23, 25-27 and in Schedule 3.	Secretary of State
Article 18	Requires the Commission to prioritise the discussion of the exchange of information and best practice.	Transposition is not necessary.	
Article 19	Provides for recovery of costs associated with work pursuant to obligations of the Directive by means of a fees or charge.	Plant Protection Products (Fees and Charges) Regulation 2011. SI 2132/2011.	Secretary of State
Article 20	Requires harmonised standards relating to the inspection of pesticide application equipment to be established in accordance with Article 6(3) of Directive 98/34/EC.	Transposition is not necessary.	
Article 21	Deals with Committee procedures.	Transposition is not necessary.	
Article 22	Provides for Commission financing.	Transposition is not necessary.	

Article 23	Transposition.	These Regulations transpose the Directive	Secretary of State
Article 24	Entry into force.	Transposition is not necessary.	
Article 25	The Directive is addressed to MS.	Transposition is not necessary.	
Annex I -	Training subjects.	Transposition is not necessary.	
Annex II	Requirements relating to the inspection of pesticide application equipment.	Transposition is not necessary.	
Annex III	General principles of integrated pest management.	Transposition is not necessary.	
Annex IV	Harmonised risk indicators.	Transposition is not necessary.	