

Summary of responses to the non-formal consultation on the Plant Protection Products Regulations 2011 and the Plant Protection Products (Fees and Charges) Regulations 2011, 1st March to 12th April 2011

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Introduction

The consultation sought views on two sets of draft Regulations. The first would support the operation of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market¹. In this document, these will be called the Enforcement Regulations. The second would set fees and charges to recover the government's costs of implementing Regulation 1107/2009 and aspects of two other pieces of EU legislation: Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides² and Regulation (EC) No 396/2005 on maximum residue levels (MRLs) of pesticides in or on food and feed of plant and animal origin³. In this document, these will be called the Fees Regulations.

The draft Enforcement Regulations cover England, Scotland and Wales; Northern Ireland's Enforcement Regulations will largely mirror them. Primarily, the new Regulations lay down enforcement powers and penalties for infringements of Regulation 1107/2009, and also implement various other aspects of it.

¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0001:0050:EN:PDF>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0071:0086:EN:PDF>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:070:0001:0016:EN:PDF>

The draft Fees Regulations cover the United Kingdom, reflecting existing arrangements whereby fees and charges are collected on a national basis. They concern the recovery of costs to government, primarily those arising under Regulation 1107/2009, but also relating to certain aspects of Directive 2009/128/EC and MRLs Regulation 396/2005.

A wide range of interests were consulted on these Regulations, including: those involved in the manufacture, supply and use of plant protection products; consumer and environmental organisations; and government bodies.

Summary of responses

Fifteen responses to the consultation were received. Eleven were received from the farming/growing industry and businesses (one of them a drinking water supply company), two from government advisory bodies and two from the public/NGOs. Respondents are listed in the Annex .

Respondents in the first two groups generally supported the overall approach of the Enforcement Regulations, but raised some concerns over legal clarity and obligations. Respondents in the third group sought greater regulation and stronger sanctions, including imprisonment, for breaches. One suggested various amendments to the regulatory provisions.

Respondents in the first two groups generally supported the overall approach of the Fees Regulations, but raised concerns about specific fees (particularly for off-label approvals and parallel trade) and matters which were proposed to be funded by the pesticide charge. One respondent in the third group proposed that costs should not be recovered from the industry, but should instead be Exchequer-funded, and suggested various amendments to the wording of the Regulations.

The consultation set out specific questions on which we sought views. These are set out below, together with a summary of responses.

1. Do you have any views on the proposed approach to offences?

Most respondents who commented supported the proposals, but two industry organisations raised concerns about the clarity and specific offences. The two public/NGO respondents sought stronger penalties, including imprisonment.

2. Do you have any views on the proposed approach to enforcement powers?

Most respondents who commented supported the proposals, but an industry organisation suggested that some enforcement powers might be stated as duties.

3. Do you have any views on the proposed designations of competent authorities?

Most respondents who commented supported the proposals, but one industry organisation expressed concern about the possible involvement of local authorities.

4. Do you have any views on the proposed designation of the Secretary of State as the co-ordinating authority?

Respondents who commented generally supported these proposals.

5. Do you have any views on the proposed retention of existing arrangements for authorising adjuvants?

Respondents generally supported these proposals, but one industry organisation proposed some clarification in order to avoid inadvertently creating an offence.

6. Do you have any views about the proposed coverage of fees?

Respondents generally supported these proposals, but industry organisations questioned specific fees, particularly as regards minor uses, parallel imports and the possible impact on aerial spraying. One public/NGO respondent thought all costs should be paid by government (a point relevant also to the following questions).

7. Do you have any views about the proposal to recover all costs associated with authorisations from fees (with a corresponding reduction in the charge) and the method of applying the increase?

Whilst generally supporting the principle, respondents who commented expressed concern about the potential impact on minor uses and fees for specific off-label approvals (SOLAs) and for aerial spraying. One industry organisation expressed a preference for targeting the product fee changes to those activities (and hence fees) to which the additional activities are most relevant.

8. Do you support the proposed 'partial dossier' approach for products? What are your views on the level of fees proposed for partial product dossiers?

Whilst generally supporting the principle, respondents who commented expressed concern about fees for SOLAs and the potential impact on minor uses.

9. Do you have any views about the proposal to recover new costs arising under Regulation 1107/2009 and Directive 2009/128/EC from the charge?

Whilst generally supporting the principle, respondents who commented expressed concern about some of the specific activities proposed and the potential impact on fees for SOLAs and minor uses.

10. Do you have any comments on the impact assessment?

Industry/business respondents who commented raised some points of detail, asked that it be reviewed if the actual impact was significantly different from that expected, and expressed concern about increased fees for SOLAs. One public/NGO respondent disagreed particularly with the assessment of the impact on the National Health Service.

11. Do you have any comments on the consultation process?

Respondents who commented were generally satisfied with the process. One industry organisation found it difficult to work between five documents. One public/NGO respondent thought all consultations should be of the formal, twelve week type.

The way forward

In light of the consultation, the Department has maintained the general approach of the Enforcement Regulations, with some technical amendments to certain provisions. The Department does not consider it necessary to include imprisonment among the sanctions in these Regulations, since it is available in other legislation under which cases could be tried where this is justified.

The Department has retained the overall structure of the Fees Regulations, but deleted or adjusted some individual fees and decided not to proceed with some matters which it proposed to fund from the charge. The Department does not consider it reasonable for the Exchequer to fund the entire operation of this regulatory regime. It is appropriate for the industry to continue to meet the costs of the services they receive.

The Regulations are expected to come into force towards the end of September 2011.

Annex - Alphabetical list of respondents

Advisory Committee on Pesticides
Agricultural Industries Confederation
Amenity Forum
British Christmas Tree Growers Association
British Independent Fruit Growers' Association
ClientEarth
Confederation of Forest Industries
Crop Protection Association
Horticultural Development Company
Interagro (UK) Ltd
MD Air Services
NFU Scotland
Sports Turf Research Institute
Scottish Water
UK Pesticides Campaign