

To: Business Committee

From: Carwyn Jones AM
Minister for Environment, Planning and Countryside

EXPLANATORY MEMORANDUM

AGRICULTURE, ENGLAND AND WALES

PESTICIDES, ENGLAND AND WALES

THE PESTICIDES (MAXIMUM RESIDUE LEVELS IN CROPS, FOOD AND FEEDING STUFFS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2007

Summary

The European Community has in place a regime permitting the setting, on a scientific basis, of maximum pesticide residue levels (MRLs) on crops, food and feeding stuffs. The programme has been designed to harmonise Community legislation and strengthen consumer protection by providing a mechanism to take action should any pesticide misuse occur.

These Regulations transpose two EC Directives (2006/62/EC and 2006/92/EC), which amend the framework Directives (76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC) developed as part of an on going program to establish MRLs for all pesticides in a wide range of foodstuffs.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) (Amendment) Regulations 2007, in accordance with Standing Order 25 section 3.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling power

3. The power enabling these Regulations to be made is contained in section 2(2) of the European Communities Act 1972. These powers are exercisable jointly by the National Assembly for Wales and by the Secretary of State for Environment, Food and Rural Affairs. The National Assembly for Wales is designated, under section 2(2) of the 1972 Act, to make Regulations in relation to Europe's Common Agricultural Policy, by virtue of the European Communities (Designation) (No. 3) Order 2005 (SI 2005/2766). This designation does not allow the Assembly to make these Regulations on a Wales only basis. Assembly functions in relation to this designation have been delegated to my portfolio as Minister for Environment, Planning and Countryside. Under the post May 2007 arrangements, we foresee that this legislation would follow the Negative procedure.

Background

4. When a crop is treated with a pesticide, a very small amount of the pesticide, or indeed what it changes to in the plant (its metabolites (substances produced by biological processes) or degradation products (compounds resulting from transformation of an organic substance through chemical, photochemical, and/or biochemical reactions)), can remain in the crop until after it is harvested. This is known as the 'residue'. The levels or amounts of residues present are expressed in milligrams of the chemical in a kilogram of crop/food/commodity (mg/kg).
5. The European Community has in place a regime permitting the setting, on a scientific basis, of maximum pesticide residue levels (MRLs) on crops, food and feeding stuffs. The programme has been designed to harmonise Community legislation and strengthen consumer protection by providing a mechanism to take action should any pesticide misuse occur.

Effect

6. These Regulations, which extend to England and Wales only, amend the provisions of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 2005 (as amended). They specify maximum levels of pesticide residues, which crops, food and feeding stuffs may contain in implementation of Council Directives 76/895/EEC relating to fruit and vegetables, 86/362/EEC and 86/363/EEC as regards cereals and products of animal origin, and 90/642/EEC as regards certain products of plant origin (including fruit and vegetables). Details of these are given at Annex A and Maximum Residue Levels (MRL) figures are published as a Schedule to the Regulations.

Target Implementation

7. It is intended that this Instrument will be made on 13 March 2007 and laid before Parliament on 16 March 2007 in order to come into force on 11 May 2007, save for Regulation 4, which shall come into force on 21 January 2008. If the intended target dates are not achieved, it would prove difficult for the Pesticides Safety Directorate, who operate on a UK basis, to enforce the new and revised maximum residue levels without statutory changes.

Financial Implications

8. The Regulations reflect a technical change to the framework Directives (76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC) rather than a policy change. Consequently there are no financial implications for the Assembly, for business or others.

Regulatory Appraisal

9. As these Regulations fall outside the definition of Assembly subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

10. No consultation has been carried out on these particular Regulations, as they reflect a technical change to the framework Directives rather than a substantive policy change.
11. In 2003 a fundamental assessment of the impact of the arrangements for setting and controlling Maximum Residue Levels (MRLs) was undertaken, on a UK wide basis, following publication of a Commission proposal to recast the procedures used by EC Member States. This proposal was subsequently adopted as a Regulation of the European Council and Parliament (EC Regulation 396/2005).
12. The following organisations were consulted as part of this assessment: representatives and advisors to the farming, growing, forestry and the crop protection industries; retailers and suppliers; consumer bodies; educational and research institutes and pressure groups and Non-Departmental Public Bodies with an interest in public health and environmental and wildlife protection.
13. In all 694 consultation documents were despatched by post and email. There were 12 responses from: farming and growing representative bodies; the crop protection industry and their advisors; the supply trade; a landowners' federation and consumer council. The consultation document received 1,300 hits on the Pesticides Safety Directorate's website. Respondents were supportive of the principle of MRLs and generally satisfied with the arrangements.
14. The 2003 consultation exercise indicated costs had changed very little since the previous assessment made in 1999 and therefore, an additional consultation was considered unnecessary for the consolidation of these current Regulations.

With Subject Committee

15. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation, on 28 September 2006 (EPC(2)-12-06(p.3) Annex 3, item no. 128) and have remained on the list ever since. However, at that time the title of the legislation was The Pesticides (Maximum Residue Levels) (Amendment) Regulations 2007. They were not identified for detailed scrutiny.

Recommended Procedure

16. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure to give Members an opportunity to debate them.

Compliance

17. The proposed legislation will (as far as is applicable):
 - have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998, section 120);
 - be compatible with the Assembly's scheme for sustainable development (section 121);

- be compatible with Community law (section 106);
 - be compatible with the Assembly's human rights legislation (section 107); and
 - be compatible with any international obligations binding the UK Government and the Assembly (section 108).
18. The information in this Memorandum has been cleared by the Legal Services Department.
19. Drafting Lawyer: Chrishan Kamalan (Ext 1246)
20. Head of Division: Norma Barry (Ext 3544)
21. Policy Division Contact: Lesley George (Ext 1153), Plant Health and Biotechnology Branch.

CARWYN JONES AM

FEBRUARY 2007

MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE

TABLE OF NEW/REVISED ACTIVE SUBSTANCES

| Directive | Active Substance | Definition |
|--|------------------|--------------------------|
| 2006/62/EC to be implemented by 20/01/08 | desmedipham | herbicide |
| | phenmedipham | herbicide |
| | chlorfenvinphos | acaricide insecticide |
| 2006/92/EC to be implemented by 11/05/07 | captan | fungicide |
| | dichlorvos | acaricide insecticide |
| | ethion | acaricide insecticide |
| | folpet | fungicide |

Acaricide is defined as a substance which prevents/kills mites.

Fungicide is defined as a substance which prevents/kills fungi.

Herbicide is defined as a substance which prevents/kills unwanted plants/weeds.

Insecticide is defined as a substance which prevents/kills unwanted insects.

Nematicide is defined as a substance which prevents/kills nematodes.