

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

EXPLANATORY MEMORANDUM

THE PESTICIDES (MAXIMUM RESIDUE LEVELS IN CROPS, FOOD AND FEEDING STUFFS) (ENGLAND AND WALES) (AMENDMENT) (No. 3) REGULATIONS 2004

Summary

The European Commission has a major programme to develop Maximum Residue Levels (MRLs) to protect short and long term impacts on human health for all the active substances used as pesticides on all significant crops. The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) (Amendment) (No. 3) Regulations 2004 will implement Commission Directive 2004/59/EC and Commission Directive 2004/61/EC.

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) (No. 3) Regulations 2004 in accordance with Standing Order 25.
2. A copy of the instrument is submitted with this memorandum.

Enabling power

3. The functions of the National Assembly in relation to the regulation and approval of pesticides are joint functions of the National Assembly and Department for Environment, Food and Rural Affairs (DEFRA).
4. These regulations are being made under section 2(2) of the European Communities Act 1972. The National Assembly is designated for the purposes of section 2(2) in relation to the common agricultural policy of the European Community (SI 1999/2788). Schedule 2 (2) (a) (ii) of the Designation Order (SI 1999/2278) provides that regulations made by the National Assembly relating to maximum levels for pesticide residues shall be made jointly with the Secretary of State for the Environment, Food and Rural Affairs. The functions of the National Assembly under this designation have been delegated to my portfolio as Assembly Minister for Environment, Planning and Countryside.

Effect

5. These Regulations, which extend to England and Wales, further amend the provisions of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 1999 (S.I. 1999/3483). The Regulations implement Commission Directive 2004/59/EC and Commission Directive 2004/61/EC.
6. The definition of "the Residues Directives" is updated (regulation 2(2)).

7. New maximum residue levels are substituted in Part 2 of Schedule 2 for residues of the pesticide Bromopropylate (regulation 2(4)(c)).
8. On 26th January 2005, in Part 2 of Schedule 2, new maximum residue levels are inserted for residues of the pesticides 1,2-Dichloroethane, Ethylene oxide, Mercury compounds and Nitrofen (regulation 2(5)(c)(ii)).
9. On the same date, new maximum residue levels are substituted for residues of the pesticides Aldrin and Dieldrin, Binapacryl, Camphechlor (Toxaphene), Captafol, Chlordane, 1,2-Dibromoethane, Dinoseb, HCH (Hexachlorocyclohexane) and Hexachlorobenzene (regulation 2(5)(c)(iii)). The last two were previously designated as Hexachlorocyclohexane (HCH) and Hexachlorobenzene (HCB).
10. On the same date, Schedule 1, which identifies the substances residues of which are taken into account in the measuring of residue levels for each pesticide, is amended to include new entries for the pesticides 1,2-Dichloroethane, Ethylene oxide and Nitrofen. The residues for the pesticides Aldrin and Dieldrin, Camphechlor (Toxaphene), Chlordane, HCH (Hexachlorocyclohexane) (under its previous designation) and Mercury compounds are replaced (regulation 2(5)(a)).
11. As a consequence of these changes, as read with the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) (Amendment) (No.2) Regulations 2003 (S.I. 2003/2591), references to the pesticide Omethoate are omitted from Schedule 1 and Part 2 of Schedule 2 (regulation 2(3) and (4)(b)) and references to the pesticides Aldrin and Dieldrin, Chlordane and Mercury compounds are omitted from Part 1 of Schedule 2 (regulation 2(5)(b)).

Target Implementation

12. It is intended that the proposed instrument be made on 28 September 2004, and laid before Parliament shortly after in order to come into force on 25 October 2004. If the intended making and coming into force dates are not achieved, it could result in Wales and England being out of step with the rest of the EU with regard to pesticide usage on all significant crops.

Regulatory Appraisal

13. In the case of these Regulations falling 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.

Financial Implications

14. The Regulations reflect a technical change to the framework Directive rather than a policy change. There are no additional financial implications for the Assembly, for business or others. Financial Planning Division has been consulted and has agreed the financial details provided.

Consultation

With Stakeholders

15. A consultation has not been conducted with the stakeholders as the Regulations reflect a technical change to the framework Directive rather than a substantive policy change.

With Subject Committee

16. A consultation has not been conducted with the Environment, Planning and Countryside Committee as the Regulations simply reflect a technical change to the framework Directive rather than a substantive policy change. However, these regulations were notified to EPC Committee via the list of forthcoming legislation put to them on 5th May 2004 (item no. 103) but were not identified for scrutiny.

Recommended Procedure

17. I recommend that these Regulations proceed to Plenary for vote without debate, without further reference to Subject Committee as these Regulations simply reflect a technical change to the EU framework Directive rather than a policy change.

Compliance

18. I can confirm that the proposed legislation (as far as applicable):

- Has due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998, section 120);
- Is compatible with the Assembly's scheme for sustainable development (section 121);
- Is compatible with Community law (section 106); and
- Is compatible with any international obligations of the United Kingdom.

19. This memorandum has been cleared by the Office of the Counsel General.

20. Drafting Lawyer: Chrishan Kamalan (Ext 1246)

21. Head of Division: Norma Barry (Ext 3544)

22. Policy Division Contact: Jonathan Williams (Ext 6144), Plant Health and Biotechnology Branch.

CARWYN JONES

MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE

AUGUST 2004