

Statutory Instrument 1997 No. 188

The Control of Pesticides (Amendment) Regulations 1997

STATUTORY INSTRUMENTS

1997 No. 188

PESTICIDES

The Control of Pesticides (Amendment) Regulations 1997

Approved by both Houses of Parliament

Made - 30 January 1997

Coming into force - 31st January 1997

The Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly, in exercise of the powers conferred on them by sections 16(2) and 24(3) of the Food and Environment Protection Act 1985[1], and of all other powers enabling them in that behalf, having regard to the interests of persons supplying information for the purposes of section 16 of that Act and after consultation with the Advisory Committee on Pesticides established under section 16(7) of that Act[2] and with the Health and Safety Commission, hereby make the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

Title, commencement and interpretation

1 . - (1) These Regulations may be cited as the Control of Pesticides (Amendment) Regulations 1997 and shall come into force on the day after the day on which they are made.

(2) In these Regulations "the principal Regulations" means the Control of Pesticides Regulations 1986[3].

Amendment of the principal Regulations

2 . The principal Regulations shall be amended in accordance with regulations 3 to 9 of these Regulations and any reference in those provisions to any specified provision shall, unless the context requires otherwise, be taken to be a reference to the provision so specified of the principal Regulations.

3 . For paragraph (1) of regulation 2 there shall be substituted the following paragraph -

" (1) In these Regulations, unless the context otherwise requires -

"the 1985 Act" means the Food and Environment Protection Act 1985;

"active ingredient" means a component of a pesticide which fits it for use as a pesticide;

"aerial application" means the application of a pesticide from an aircraft in flight;

"agricultural" has the meaning assigned to it in section 24(1) of the 1985 Act;

"approval" means an approval given jointly by the Ministers under regulation 5 in relation to a pesticide and "approved" shall be construed accordingly;

"contravenes" includes "fails to comply with";

"creature" has the meaning assigned to it in section 24(1) of the 1985 Act;

"crops" has the meaning assigned to it in section 24(1) of the 1985 Act;
"full approval" has the meaning assigned to it in regulation 5(2)(c);
"ground water" means any waters contained in underground strata;
"organism" means any animal, plant, fungus or micro-organism capable of carrying on life processes;

"pesticide" has the meaning assigned to it in section 16(15) of the 1985 Act;
"plants" has the meaning assigned to it in section 24(1) of the 1985 Act;
"provisional approval" has the meaning assigned to it in regulation 5(2)(b);
"sell" includes offer or expose for sale or have in possession for the purpose of sale and "sale" shall be construed accordingly;
"substance" means any chemical element or compound which occurs naturally or by manufacture and includes any impurity which results from the manufacturing process;
"supply" includes offer to supply;
"surface water" means estuarial and coastal waters and any lake, loch, pond, reservoir, river, stream or watercourse including the bottom, channel or bed of any lake, loch, pond, reservoir, river, stream or, as the case may be, watercourse which is for the time being dry."

4 . For regulation 3 there shall be substituted the following regulation -

" Scope 3 . - (1) Subject to the following provisions of this regulation, these Regulations apply to -

(a) any pesticide; or
(b) any substance, preparation or organism prepared or used for any of the following purposes -
(i) protecting plants or wood or other plant products from harmful organisms;
(ii) regulating the growth of plants;
(iii) giving protection against harmful creatures;
(iv) rendering such creatures harmless;
(v) controlling organisms with harmful or unwanted effects on water systems (including sewage treatment works), buildings or other structures, or on manufactured products;
(vi) protecting animals against ectoparasites;

as if it were a pesticide.

(2) These Regulations do not apply to -

(a) organisms, other than bacteria, protozoa, fungi, viruses and mycoplasmas, used for destroying or controlling pests;

(b) substances, preparations or organisms whose use or sale within the United Kingdom is controlled under any of the following enactments -

(i) the Medicines Act 1968[4];
(ii) Part IV of the Agriculture Act 1970[5];
(iii) the Food Safety Act 1990[6];
(iv) the Cosmetic Products (Safety) Regulations 1984[7];
(v) the Water Supply (Water Quality) Regulations 1989[8];
(vi) the Water Supply (Water Quality) (Scotland) Regulations 1990[9], when those substances, preparations or organisms are used or sold for the purpose over which control under that enactment is exercised;

(c) substances, preparations or organisms controlled by the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994[10];

(d) any plant protection product the placing on the market and use of which are subject to the prohibitions specified in regulation 3(1) and (2) of the Plant Protection Products Regulations 1995[11] or which is approved under regulation 9 of those Regulations[12];

(e) substances, preparations or organisms prepared or used for the purpose of disinfecting, bleaching or sterilising any substance (including water), other than soils, compost or other growing medium;

(f) substances, preparations or organisms used in laboratories for the purpose of the micropropagation of plants or substances, preparations or organisms used in the production of novel food;

(g) substances, preparations or organisms designed and used for -

(i) the stimulation of the growth of plants, excluding materials which act as plant growth hormones, or which mimic the action of such materials;

(ii) the modification of micro-biological processes in soil, excluding soil sterilants;

(iii) assistance in the anaerobic fermentation of silage;

(h) substances, preparations or organisms designed and used for destroying or controlling pests by purely physical means;

(i) pesticides -

(i) used in adhesive pastes, decorative paper or textiles;

(ii) intended solely for exportation from the United Kingdom;

(iii) applied externally or by impregnation as part of a manufacturing process, other than -

(aa) in the preservation of timber or timber products, the production of food or the treatment of seed, compost or any other growing medium, or

(bb) for the purpose of preventing the fouling of the hulls of vessels or structures below the waterline, or

(cc) for the treatment of nets, floats or other apparatus to be used in the cultivation of fish;

(iv) used in preparations intended for topical application to human beings for the purpose of repelling insects;

(v) used in metal working fluids;

(vi) used in paint for the sole purpose of preserving the paint;

(vii) used in water-based cooling or heating systems, humidifying systems or swimming pools.

(3) In this regulation -

"disinfecting" means destroying micro-organisms other than bacterial spores;

"metal working fluid" means any fluid used to facilitate the cutting, drilling, forming or machining of metal;

"micropropagation" means the growth of plantlets from tissue culture or small parts of a plant in culture solution and under conditions which are sterile apart from the presence of the plant;

"mycoplasma" means a genus of organisms which have a unit membrane without a rigid cell wall and are highly pleomorphic, having no independent form or spore stage in the life cycle;

"novel food" has the same meaning as in section 18(3) of the Food Safety Act 1990;

"paint" includes surface coatings;

"pest" has the meaning assigned to it in section 16(15) of the 1985 Act;

"placing on the market" and "plant protection product" have the same meanings as in the Plant Protection Products Regulations 1995;

"preparation" means a mixture or solution composed of two or more substances;

"soil sterilant" means a product used for sterilising soil or compost;

"sterilising" means destroying all micro-organisms including any bacterial spores."

5 . For paragraph (2) of regulation 5 there shall be substituted the following paragraph -

" (2) The Ministers' approval may be given in relation to a pesticide, in the form of -

(a) an experimental permit, to enable testing and development to be carried out with a view to providing the Ministers with safety and other data;

(b) a provisional approval, for a stipulated period; or

(c) a full approval, for an unstipulated period."

6 . For regulation 6 there shall be substituted the following regulation -

" Consents 6 . The Ministers may jointly give their consent to -

(a) the advertisement of pesticides, subject to the conditions specified in Schedule 1;

(b) the sale, supply and storage of pesticides, subject to the conditions specified in Schedule 2;

(c) the use of pesticides, subject to -

(i) the conditions specified in Schedule 3, and

(ii) in the case of the use of pesticides by aerial application, the conditions specified in Schedule 4, and where they have given a consent under this regulation the Ministers shall jointly publish, in such manner as they consider appropriate, a notice specifying the fact."

7 . For regulation 7 there shall be substituted the following regulation -

" Seizure, disposal etc 7 . - (1) Where there has been a breach, in relation to any pesticide, of any of the specified prohibitions imposed by regulation 4, any condition of an approval or any condition of a consent given under regulation 6, either of the Ministers shall have the power -

(a) to seize or dispose of the pesticide or require the holder of the approval, or any other person appearing to the Minister to be the owner or the person in charge of that pesticide, to dispose of it;

(b) to seize or dispose of anything treated with the pesticide or require any person appearing to the Minister to be the owner or the person in charge of anything so treated to dispose of it;

(c) to require the holder of the approval, or any other person appearing to the Minister to be the owner or the person in charge of the pesticide, to take such remedial action as appears to that Minister to be necessary as a result of the contravention including, where it appears to be necessary as a result of the contravention, recovery of the pesticide from the market in Great Britain.

(2) If any pesticide has been imported into -

(i) Great Britain in contravention of any of the specified prohibitions imposed by regulation 4, any condition of an approval or any condition of a consent given under regulation 6; or

(ii) Northern Ireland in contravention of any of the specified prohibitions imposed by regulation 4 of the Control of Pesticides Regulations (Northern Ireland) 1987[13], any condition of an approval granted under regulation 5 of those Regulations or any condition of a consent given under regulation 6 of those Regulations,

either of the Ministers may, by notice in writing served on the person appearing to him to be the owner, the importer or the person in charge of the pesticide, require that it shall be exported from the United Kingdom within such period as that Minister reasonably may determine."

8 . For regulation 8 there shall be substituted the following regulation -

" Release of information to the public

8 . - (1) The Ministers may, at the request of any person, at such reasonable time and place as they may determine, make any evaluation held by them available to that person for inspection.

(2) The Ministers may, at the request of any person, supply that person with a copy of any evaluation held by them on payment of such fee (which may not exceed the cost reasonably attributable to the supply) as the Ministers, with the consent of the Treasury, may determine.

(3) The Ministers may, at the request of any person to whom an evaluation has been made available for inspection under paragraph (1) above or to whom a copy of an evaluation has been supplied under paragraph (2) above, make available at such reasonable time and place as they may determine for inspection by that person any study reports held by them to which the evaluation relates.

(4) No person to whom any information or document has been made available for inspection under paragraph (1) or (3), or to whom a copy of any information or document has been furnished under paragraph (2), shall make any commercial use of it nor, unless authorised in writing by the Ministers to do so, publish any part of it.

(5) In this regulation -

"commercial use", in relation to any information or document, includes the use of that information or document in any manner whatsoever in connection with the manufacture, distribution, importation,

advertisement, sale, supply, storage, use or export of any pesticide but does not include the use of that information or document for the purpose of books, journals or other publications with the written authorisation of the Ministers;

"evaluation" means a written evaluation of study reports or other data examined in the course of an appraisal of the active ingredient of a pesticide leading to the giving of a full approval or provisional approval, the amendment of any conditions imposed in relation to any such approval, or the revocation of any such approval, in relation to that pesticide;

"study reports" means study reports and any other data relating to an application for a full approval or provisional approval or the continuance of any such approval including the amendment of the conditions imposed in relation to any such approval.

(6) This regulation is without prejudice to the provisions of the Environmental Information Regulations 1992[14] and Article 14 of Council Directive 91/414/EEC concerning the placing of plant protection products on the market[15]."

9 . For Schedules 1, 2, 3 and 4 there shall be substituted the Schedules which are set out in the Schedule to these Regulations.

Angela Browning Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food
30th January 1997

Lindsay Parliamentary Under Secretary of State, Scottish Office
28th January 1997

SCHEDULE Regulation 9

" SCHEDULE 1 Regulation 6(a)

CONDITIONS RELATING TO CONSENT TO THE ADVERTISEMENT OF PESTICIDES

1. - (1) An advertisement of a pesticide shall relate only to such conditions as are permitted by the approval given in relation to that pesticide.

(2) No advertisement of a pesticide shall contain any claim for safety in relation to that pesticide which is not permitted by the approval given in relation to that pesticide to be on the label for the pesticide.

2. - (1) Any advertisement of a pesticide, other than a notice at the point of sale which is intended to draw attention solely to product name and price, shall include -

(a) a statement of each active ingredient of each pesticide mentioned in the advertisement, such statement being the name by which each active ingredient is identified in the approval given in relation to the pesticide in which it is contained;

(b) a general warning as follows:

"Always read the label. Use pesticides safely"; and

(c) where required by a condition of the approval given in relation to a pesticide mentioned in the advertisement, a statement of any special degree of risk to human beings, creatures, plants or the environment.

(2) Notwithstanding sub-paragraph (1)(a) above -

(a) any price list consisting only of an indication of product availability and price need not state the active ingredient of each pesticide;

(b) any advertisement of a range of pesticides need only state the active ingredients of those individual products which are identified by name.

(3) Any statement or warning given under this paragraph shall be -

(a) in the case of a printed or pictorial advertisement, clearly presented separately from any other text; and

(b) in the case of an advertisement which is broadcast or recorded or is stored or transmitted by electronic means, clearly spoken or shown separately.

3. In this Schedule "advertisement" means any printed, pictorial, broadcast or recorded advertisement and includes any advertisement which is stored or transmitted by electronic means.

SCHEDULE 2 Regulation 6(b)

CONDITIONS RELATING TO CONSENT TO THE SALE, SUPPLY AND STORAGE OF PESTICIDES

1. It shall be the duty of all employers to ensure that persons in their employment who may be required during the course of their employment to sell, supply or store pesticides are provided with such instruction, training and guidance as is necessary to enable those persons to comply with any requirements provided in and under these Regulations.

2. - (1) Any person who sells, supplies or stores a pesticide shall -

(a) take all reasonable precautions, particularly with regard to storage and transport, to protect the health of human beings, creatures and plants, safeguard the environment and in particular avoid the pollution of water; and

(b) be competent for the duties which that person is called upon to perform.

(2) In this paragraph "water" means -

(a) any surface water;

(b) any ground water.

3. No person shall sell, supply or otherwise market to the end-user an approved pesticide other than in the container which has been supplied for that purpose by the holder of the approval of that pesticide and labelled in a manner consistent with the approval.

4. No person shall store for the purpose of sale or supply a pesticide approved for agricultural use in a quantity in excess of, at any one time, 200 kg or 200 litres, or a similar mixed quantity, unless that person -

(a) has obtained a certificate of competence recognised by the Ministers, or

(b) stores that pesticide under the direct supervision of a person who holds such a certificate.

5. No person shall sell, supply or otherwise market to the end-user a pesticide approved for agricultural use unless that person -

(a) has obtained a certificate of competence recognised by the Ministers, or

(b) sells or supplies that pesticide under the direct supervision of a person who holds such a certificate.

6. - (1) In paragraphs 4 and 5 above "pesticide approved for agricultural use" means a pesticide (other than a pesticide with methyl bromide or chloropicrin as one of its active ingredients) approved for one or more of the following uses -

(a) agriculture and horticulture (including amenity horticulture);

(b) forestry;

(c) in or near water other than for amateur, public hygiene or anti-fouling uses;

(d) industrial herbicides, including weed-killers for use on land not intended for the production of any crop.

(2) In this paragraph "water" means any surface water.

SCHEDULE 3 Regulation 6(c)(i)

CONDITIONS RELATING TO CONSENT TO THE USE OF PESTICIDES

1. It shall be the duty of all employers to ensure that persons in their employment who may be required during the course of their employment to use pesticides are provided with such instruction, training and guidance as is necessary to enable those persons to comply with any requirements provided in and under these Regulations.

2. - (1) Any person who uses a pesticide shall take all reasonable precautions to protect the health of human beings, creatures and plants, safeguard the environment and in particular avoid the pollution of water.

(2) In this paragraph "water" means -

(a) any surface water;

(b) any ground water.

3. No person in the course of a business or employment shall use a pesticide, or give an instruction to others on the use of a pesticide, unless that person -

(a) has received adequate instruction, training and guidance in the safe, efficient and humane use of pesticides, and

(b) is competent for the duties which that person is called upon to perform.

4. Any person who uses a pesticide shall confine the application of that pesticide to the land, crop, structure, material or other area intended to be treated.

5. - (1) Subject to sub-paragraph (4) below, no person shall use a pesticide in conjunction with an adjuvant in any manner unless -

(a) that adjuvant has been specified, upon application by any person (in this paragraph 5 referred to as "the applicant") to the Ministers, in a list of adjuvants published by the Ministers from time to time (in this paragraph 5 referred to as "the list"); and

(b) the use of that pesticide with that adjuvant in that manner is in accordance with -

(i) the conditions of the approval given in relation to that pesticide; and

(ii) any requirements to which the use of that adjuvant with that pesticide is subject, as determined or amended under sub-paragraph (2)(a)(ii) or (iii) below.

(2) In the application of this paragraph -

(a) the Ministers may, in relation to any adjuvant specified in the list, at any time -

(i) determine data requirements (concerning human safety or environmental protection) to which the specification of that adjuvant in the list shall be subject;

(ii) determine requirements to which the use of that adjuvant with approved pesticides shall be subject;

(iii) for reasons of human safety or environmental protection, or with the consent of the applicant, amend any requirement which has been determined under sub-paragraph (ii) above;

(b) the Ministers shall, in relation to any adjuvant specified in the list, also specify in that list any requirements which they have determined or amended under paragraph (a)(ii) or (iii) above.

(3) In the application of this paragraph -

(a) the Ministers may, in relation to any adjuvant specified in the list, remove that adjuvant from the list -

(i) if it appears to them that the applicant has failed to comply with any data requirement which has been determined in relation to that adjuvant under sub-paragraph (2)(a)(i) above;

(ii) if it appears to them that any relevant literature relating to the adjuvant is not in accordance with any requirement to which the use of that adjuvant is subject, as determined or amended under sub-paragraph (2)(a)(ii) or (iii) above;

(iii) if it appears to them that -

(aa) any relevant literature relating to the adjuvant refers to a pesticide, and

(bb) the use of that adjuvant with that pesticide is not in accordance with the conditions of the approval given in relation to that pesticide;

(iv) for reasons of human safety or environmental protection;

(v) at the request of the applicant;

(b) the Ministers shall, upon a decision to remove an adjuvant from the list specify in the list -

(i) that decision, and

(ii) the date on which, and any conditions in accordance with which, the removal is to take effect;

(c) "relevant literature", in relation to any adjuvant, means -
(i) the labelling of the packaging in which the adjuvant is contained;
(ii) any leaflet accompanying that package;
(iii) any other literature produced by, or on behalf of, the applicant describing the adjuvant.

(4) This paragraph shall not apply where the use of an adjuvant with an approved pesticide is for the purpose of research or development and is carried out under the direct control of the person intending to place the adjuvant on the market.

(5) In this paragraph "adjuvant" means a substance other than water, without significant pesticidal properties, which enhances or is intended to enhance the effectiveness of a pesticide when it has been added to that pesticide.

6. - (1) No person shall combine or mix for use two or more pesticides which are anticholinesterase compounds unless such a mixture is expressly permitted by the conditions of the approval given in relation to at least one of those pesticides or by the labelling of the container in which at least one of those pesticides has been sold, supplied or otherwise marketed to that person.

(2) No person shall combine or mix for use two or more pesticides unless -

- (a) all of the conditions of approval given in relation to each of those pesticides, and
- (b) the labelling of the container in which each of those pesticides has been sold, supplied or otherwise marketed to that person, can be complied with.

7. - (1) No person in the course of a commercial service shall use a pesticide approved for agricultural use unless that person -

- (a) has obtained a certificate of competence recognised by the Ministers; or
- (b) uses that pesticide under the direct and personal supervision of a person who holds such a certificate; or
- (c) uses it in accordance with an approval, if any, for one or more of the following uses-
 - (i) home garden (amateur gardening);
 - (ii) animal husbandry;
 - (iii) food storage practice;
 - (iv) vertebrate control (including rodenticides and repellents);
 - (v) domestic use;
 - (vi) wood preservation;
 - (vii) as a surface biocide;
 - (viii) public hygiene or prevention of public nuisance;
 - (ix) other industrial biocides;
 - (x) as an anti-fouling product;
 - (xi) "other" (as may be defined by the Ministers).

(2) In this paragraph "commercial service" means the application of a pesticide by a person -

- (a) to crops, land, produce, materials, buildings or the contents of buildings not in the ownership or occupation of that person or that person's employer;

(b) to seed other than seed intended solely for use by that person or that person's employer.

8. No person who was born later than 31 December 1964 shall use a pesticide approved for agricultural use unless that person -

(a) has obtained a certificate of competence recognised by the Ministers; or

(b) uses that pesticide under the direct and personal supervision of a person who holds such a certificate; or

(c) uses it in accordance with an approval, if any, for one of the uses specified in paragraph 7(1)(c) above.

9. - (1) In paragraphs 7 and 8 above "pesticide approved for agricultural use" means a pesticide (other than a pesticide with methyl bromide or chloropicrin as one of its active ingredients) approved for one or more of the following uses -

(a) agriculture and horticulture (including amenity horticulture);

(b) forestry;

(c) in or near water, other than for amateur, public hygiene or anti-fouling uses;

(d) industrial herbicides, including weed-killers for use on land not intended for the production of any crop.

(2) In this paragraph "water" means any surface water.

SCHEDULE 4 Regulation 6(c)(ii)

CONDITIONS RELATING TO CONSENT TO THE USE OF PESTICIDES BY AERIAL APPLICATION

1. No person shall undertake an aerial application of a pesticide unless -

(a) an aerial application certificate granted under article 42(2) of the Air Navigation Order 1985[16] is held by that person, that person's employer or the main contractor undertaking the aerial application, and

(b) the pesticide to be used has been approved for the intended aerial application.

2. - (1) No person shall undertake an aerial application of a pesticide unless that person, or a person specifically designated in writing on that person's behalf, has -

(a) not less than 72 hours before the commencement of the aerial application consulted the relevant authority if any part of land which is a Local Nature Reserve, a Marine Nature Reserve, National Nature Reserve or Site of Special Scientific Interest lies within 1500 metres of any part of the land to which that pesticide is to be applied;

(b) not less than 72 hours before the commencement of the aerial application consulted the appropriate area office of the Environment Agency (if the area in which the intended aerial application is to take place is in England and Wales) or the appropriate area office of the Scottish Environment

Protection Agency (if such area is in Scotland) if the land to which that pesticide is to be applied is adjacent to, or within 250 metres of, water;

(c) obtained the consent of such office if that pesticide is to be applied for the purpose of controlling aquatic weeds or weeds on the banks of watercourses or lakes;

(d) not less than 24 hours and (so far as is practicable) not more than 48 hours before the commencement of the aerial application, given notice of the intended aerial application to the Chief Environmental Health Officer for the district in which the intended aerial application is to take place;

(e) not less than 24 hours and (so far as is reasonably practicable) not more than 48 hours before the commencement of the aerial application given notice of the intended aerial application to the occupants or their agents of all property within 25 metres of the boundary of the land to which that pesticide is to be applied;

(f) not less than 24 hours and (so far as is practicable) not more than 48 hours before the commencement of the aerial application, given notice of the intended aerial application to the person in charge of any hospital, school or other institution any part of the curtilage of which lies within 150 metres of any flight path intended to be used for the aerial application; and

(g) not less than 48 hours before the commencement of the aerial application, given notice of the intended aerial application to the appropriate reporting point of the local beekeepers' spray warning scheme operating within the district in which the intended aerial application is to take place.

(2) A notice of an intended aerial application given under paragraph (e) or (f) of sub-paragraph (1) above shall be in writing and include details of -

(a) the name and address, and telephone number (if any), of the person intending to carry out the aerial application;

(b) the name of the pesticide to be applied and its active ingredient and approval registration number;

(c) the intended time and date of application; and

(d) an indication that the same details have been served on the Chief Environmental Health Officer for the district in which the intended aerial application is to take place.

3. No person shall undertake an aerial application of a pesticide unless -

(a) the wind velocity at the height of application at the place of intended aerial application does not exceed 10 knots, except where the approval given in relation to that pesticide permits aerial application when such wind velocity exceeds 10 knots;

(b) not less than 24 hours before the aerial application, that person has provided and put in place within 60 metres of the land to which that pesticide is to be applied signs, of adequate robustness and legibility, to warn pedestrians and drivers of vehicles of the time and place of the intended aerial application; and

(c) before the aerial application that person has provided ground markers in all circumstances where a ground marker will assist the pilot to comply with the provisions of paragraph 5 below.

4. Any person who undertakes the aerial application of a pesticide shall -

(a) keep and retain for not less than 3 years after each application records of -

(i) the nature, place and date of that application;
(ii) the registration number of the aircraft used;
(iii) the name and permanent address of the pilot of that aircraft;
(iv) the name and quantity of the pesticide applied;
(v) the dilution and volume of application of the pesticide applied;
(vi) the type and specification of application system (which may include nozzle type and size);
(vii) the method of application;
(viii) the flight times of the aerial application;
(ix) the speed and direction of the wind during the application; and
(x) any unusual occurrences which affected the application;

(b) provide the Ministers with summaries of the records required by sub-paragraph (a) above, in any manner which they may require under section 16(11) of the 1985 Act, within 30 days after the end of the calendar month to which those records relate.

5. The pilot of an aircraft engaged in an aerial application shall -

(a) maintain the aircraft at a height of not less than 200 feet[17] from ground level when flying over an occupied building or its curtilage;

(b) maintain the aircraft at a horizontal distance from any occupied building and its curtilage, children's playground, sports ground or building containing livestock of -

- (i) not less than 30 metres, if the pilot has the written consent of the occupier; and
- (ii) not less than 60 metres, in any other case;

(c) maintain the aircraft at a height of not less than 250 feet from ground level over any motorway, or of not less than 100 feet from ground level over any other public highway, unless that motorway or public highway has been closed to traffic during the course of the application.

6. For the purposes of this Schedule -

"appropriate nature conservation agency" means English Nature, Scottish Natural Heritage and the Countryside Council for Wales;

"curtilage", in relation to any building, means the land attached to, and forming one enclosure with, that building;

"ground marker" includes a person who is instructed by a person intending to carry out an aerial application to be present on or near to the land to which the pesticide is to be applied so that that person is able to communicate with the pilot of the aircraft engaged in the aerial application for the purpose of ensuring the safe application of that pesticide;

"local beekeepers' spray warning scheme" means any scheme for the advance notification of the application of pesticides, organised by local beekeepers and notified to the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland or the Secretary of State for Wales (being the Secretaries of State respectively concerned with agriculture in Scotland and Wales);

"Local Nature Reserve" means a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949[18] and "the relevant authority" in regard to such a reserve shall be the local authority which is providing or securing the provision of the reserve;

"Marine Nature Reserve" means an area designated as such by the Secretary of State under section 36 of the Wildlife and Countryside Act 1981[19] and the "relevant authority" in regard to such an area shall be the appropriate nature conservation agency;

"National Nature Reserve" means any land declared as such by the appropriate nature conservation agency under section 19 of the National Parks and Access to the Countryside Act 1949, or under section 35 of the Wildlife and Countryside Act 1981, and "the relevant authority" in regard to such land shall be the appropriate nature conservation agency;

"Site of Special Scientific Interest" means any area designated as such by the appropriate nature conservation agency under section 28 of the Wildlife and Countryside Act 1981, or in respect of which the Secretary of State has made an Order under section 29 of the Wildlife and Countryside Act 1981, and "the relevant authority" in regard to such an area shall be the appropriate nature conservation agency;

"water" means any surface water."

EXPLANATORY NOTE (This note is not part of the Regulations)

These Regulations amend the Control of Pesticides Regulations 1986 (S.I. 1986/1510), as amended (S.I. 1990/2487 and 1994/3142) ("the principal Regulations"). The principal Regulations have been made for the purpose of controlling pesticides in implementation of Part III of the Food and Environment Protection Act 1985 and require the advertisement, sale, supply, storage and use in Great Britain of any pesticide product falling within the scope of the principal Regulations to be carried out in accordance with an approval granted by the Minister of Agriculture, Fisheries and Food and the Secretary of State ("the Ministers") in relation to that product and in accordance with consents made by the Ministers ("the consents"). The principal amendments are given below.

The Regulations -

(a) clarify the scope of products to which the principal Regulations apply by expressly providing that -

(i) they apply to products (that is, substances, preparations or organisms) prepared or used for controlling harmful or unwanted effects on sewage treatment works;

(ii) they apply to products applied in the treatment of seed, compost or any other growing medium;

(iii) the exemption for products used in paint applies only to products used for the sole purpose of preserving the paint;

(iv) the exemption for products used in water supply systems applies to products used in water-based cooling or heating systems and humidifying systems; and

(b) exclude from the scope of products to which the principal Regulations apply -

(i) products whose sale or use within the United Kingdom is controlled by the Water Supply (Water Quality) Regulations 1989 or the Water Supply (Water Quality) (Scotland) Regulations 1990;

(ii) plant protection products the placing on the market and use of which are subject to the prohibitions specified in regulation 3(1) of the Plant Protection Products Regulations 1995 or which are approved under regulation 9 of those Regulations;

(iii) products designed and used for destroying or controlling pests by purely physical means (regulation 4).

The Regulations clarify the powers available to each of the Ministers in the event of a breach of the principal Regulations (including breaches of an approval or the consents) to seize or dispose of pesticides or anything treated with a pesticide, require their seizure or disposal, require the taking of remedial action (which can where necessary include recovery of a pesticide from the market) and require the re-exportation of pesticides imported in contravention of any such breach (regulation 7).

The Regulations amend regulation 8 of the principal Regulations, which provides a right of access to information (study reports and evaluations) concerning approvals, qualified by a prohibition on making commercial use, by -

(a) clarifying its scope expressly to include study reports supplied to the Ministers, and evaluations carried out for them, in connection with a review of the continuance of an approval;

(b) clarifying its scope expressly to allow access to information at any time from the granting or amendment of an approval and not only at that time;

(c) providing a definition of commercial use;

(d) expressly making regulation 8 subject to the Environmental Information Regulations 1992 and Article 14 of Council Directive 91/414/EEC concerning the placing of plant protection products on the market (regulation 8).

The Regulations remove the requirement for the consents, and conditions to which they are subject, to be published in the London and Edinburgh Gazettes (regulation 6). The Schedules to the Regulations specify the conditions to which the consents, once made by the Ministers, are automatically subject. The Schedules amend and replace the existing published consents. The principal amendments are as follows:

(a) the conditions relating to the advertisement of pesticides (Schedule 1) have been simplified and their scope extended expressly to include advertisement by electronic means;

(b) the conditions relating to the sale, supply and storage of pesticides (Schedule 2) have been amended by extension of the exemption from the requirement to hold a certificate of competence (applicable generally to pesticides approved for agricultural use) to pesticides containing chloropicrin and by provision of specific definitions of water;

(c) the conditions relating to the use of pesticides (Schedule 3) have been amended by -

(i) extension of the training and competence requirements to persons giving instruction on the use of pesticides;

(ii) extension of the requirement that persons using pesticides confine their application to the area intended to be treated (which formerly was relevant only to pesticides applied by aerial application) to pesticides applied by any method;

(iii) development of the controls concerning the use of pesticides with adjuvants by, in particular, expressly enabling the Ministers to set and amend conditions for the inclusion of adjuvants in, and to remove adjuvants from, the published list and exempting from those controls adjuvants used with approved pesticides for the purpose of research or development where use is carried out under the direct control of the person intending to place the adjuvant on the market;

(iv) extension of the exemption from the requirement for those using pesticides in the course of a commercial service or those using pesticides who were born later than 31 December 1964 to hold a certificate of competence (applicable generally to pesticides approved for agricultural use) to pesticides containing chloropicrin;

(v) provision of specific definitions of water;

(d) the conditions relating to the use of pesticides by aerial application (Schedule 4) have been amended in minor respects, for example by updating references to some of the public bodies, by metrication of the horizontal distances and by provision of a specific definition of water.

These Regulations were notified in draft to the European Commission in accordance with Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (O.J. No. L109, 26.4.83, p. 8), as amended.

A compliance cost assessment has been prepared and a copy has been placed in the library of each House of Parliament. Copies of the compliance cost assessment can be obtained from the Pesticides

Safety Directorate of the Ministry of Agriculture, Fisheries and Food, Room 308, Mallard House, Kings Pool, 3 Peasholme Green, York YO1 2PX.

Notes:

[1] 1985 c.48; section 16 was amended by the Pesticides (Fees and Enforcement) Act 1989 (c.27) and section 24(1) contains a definition of the Ministers.

[2] Established by S.I. 1985/1516.

[3] S.I. 1986/1510, as amended by the Food Safety Act 1990 (Consequential Modifications) (No. 2) (Great Britain) Order 1990 (S.I. 1990/2487) and the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 (S.I. 1994/3142).

[4] 1968 c.67.

[5] 1970 c.40.

[6] 1990 c.16.

[7] S.I. 1984/1260.

[8] S.I. 1989/1147, amended by S.I. 1989/1384 and 1991/1837.

[9] S.I. 1990/119 (s.11).

[10] S.I. 1994/3142.

[11] S.I. 1995/887, amended by S.I. 1996/1940, which implements in Great Britain Council Directive 91/414/EEC concerning the placing of plant protection products on the market (O.J. No. L230, 19.8.1991, p. 1). In principle the prohibitions specified in regulation 3(1) and (2) (which provide that no person may place on the market and use any plant protection product within Great Britain unless that product has been approved under those Regulations) apply to all plant protection products but Schedule 3 to those Regulations contains transitional provisions whereby plant protection products containing active substances which were on the market of the member States of the European Community and other States of the European Economic Area on or before the dates specified in the definition of old active substance in regulation 2(1) of those Regulations do not become subject to the prohibitions specified in regulation 3(1) and (2) until it has been decided, under Article 6 of the Directive, whether the active substances concerned should, or should not, be included in Annex I to the Directive.

[12] Regulation 9 prohibits the carrying out of any experiment or test for research or development purposes involving the release into the environment of a plant protection product which has not been approved under the Plant Protection Products Regulations unless an approval for trial purposes has been granted by the Ministers under that regulation; under regulation 3(4) a plant protection product which is so approved is exempted from the prohibitions specified in regulation 3(1) and (2).

[13] S.R. (N.I.) 1987 No. 414.

[14] S.I. 1992/3240, which implements in Great Britain Council Directive 90/313/EEC on the freedom of access to information on the environment (O.J. No. L158, 23.6.90, p. 56); these Regulations provide for a general right of disclosure of information relating to the environment which is held by (inter alia) Ministers of the Crown (other than information capable of being treated as confidential) and specify

certain requirements which must be observed in responding to requests for disclosure of such information.

[15] O.J. No. L230, 19.8.1991, p. 1. Article 14 of the Directive obliges member States to treat as confidential any information involving industrial and commercial secrets provided in support of applications for authorisation of plant protection products under the Directive, where applicants for such authorisation so request and the member State accepts that the request is warranted, subject however to the second paragraph of that Article which removes from that protection all information of the types set out in that paragraph.

[16] S.I. 1985/1643.

[17] The metric equivalent of one foot is 0.3048 metres (Council Directive 89/617/EEC, O.J. No. L357, 7.12.89, p. 29).

[18] 1949 c.97.

[19] 1981 c.69.