

**Health and Safety Executive Senior Management Team Paper SMT/09/14**

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| <b>Meeting Date:</b>  | 4 February 2008 | <b>FOI Status:</b> | Fully Open |
| <b>Type of Paper:</b> | Below the line  | <b>Trim Ref:</b>   | 2009/35912 |
| <b>Exemptions:</b>    | None            |                    |            |

**HEALTH AND SAFETY EXECUTIVE****Senior Management Team****Proposals for enforcement arrangements for pesticides regulation**

A Paper by Iain Evans

Cleared by David Ashton on 26 January 2009

**Issue**

1. Following the merger of HSE and Pesticides Safety Directorate (PSD), the arrangements for the investigation and prosecution of pesticide incidents currently undertaken by PSD's Pesticides Regulatory and Enforcement Policy (PREP) Branch require review.

**Timing**

2. For approval at the February SMT meeting to allow the development of systems, procedures and training before termination of external contract.

**Recommendation**

3. The SMT is invited to consider this paper and approve the establishment of a National Pesticides Enforcement Team (NPET) within FOD to investigate and manage the prosecution of serious pesticide exposure incidents in England (about 3-7 cases per year). Different arrangements are required in Scotland and Wales. FOD and NPET would also provide support and training for PSD officers to enable them to investigate serious cases relating to illegal supply and use of pesticides.
4. It should be noted that the terminology in this paper (including reference to PSD) reflects the current situation rather than the organisational naming that will apply if the Board agrees to the proposed establishment of the Chemical Regulation Directorate.

**Background**Current situation

5. PSD is responsible for enforcing UK and EU pesticides legislation, covering controls on the advertising, sale, supply and use of pesticides and maximum residue levels in food (1-3 cases per year). PSD also co-ordinates the Wildlife Incident Investigation Scheme (WIIS) and takes forward prosecutions relating to illegal use identified under this scheme (3-7 cases per year).
6. Complaint investigation and the service of enforcement notices are currently carried out directly by PSD officers or on their behalf by Natural England inspectors (a NDPB). Where a serious breach of the regulations has occurred

and is likely to exceed the threshold for a prosecution, the initial evidence gathered by PSD/Natural England is passed to DEFRA Investigation Services (DIS) for further investigation.

7. DIS is part of DEFRA's Rural Payments Agency and carries out the criminal investigation and then produces a report making a recommendation on the evidential basis for or against a prosecution. Prior to April 2008 DEFRA lawyers considered this report against the public interest test and then instructed solicitors/counsel where a prosecution was to be commenced. As an interim arrangement, DIS now pass completed investigations to HSE Legal Advisers Office for prosecution decision (in consultation with PSD) and case management, however DIS remain responsible for the criminal investigation. The contract for DIS is due to expire in April 2009, and so this contract will require renewal, temporary extension or in-house arrangements to be made.
8. Prior to the merger HSE had, and still retains, a duty to investigate certain pesticide incidents following an Agency Agreement with DEFRA. Incidents involving pesticides usage during a work activity where HSE was the enforcing authority are investigated by FOD inspectors, typically agricultural teams, who are warranted for such investigation and enforcement. This involves discussions relating to pesticide storage and control when inspecting farms, and serving enforcement notices under pesticides legislation. This provides the basis for the preferred future option of a national "virtual" team in FOD.

## **Argument**

9. The use of an external agency to carry out criminal investigations on behalf of HSE carries an element of business risk. DIS mainly employs former police officers to investigate incidents; however PSD cases are not their core workload. PSD has limited (albeit improving) control over the investigation once transferred to DIS.
10. PSD has an annual budget of £150,000 for investigations work. DIS delivers this service at a cost of £61 per hour.
11. FOD has the knowledge, experience and support systems to conduct these investigations in-house, exercising management control and oversight of the investigation throughout.

## Options

12. A number of options were considered for the enforcement of PSD's cases, including:
  - Maintaining the status quo by renewing the DIS contract.
  - A central PSD team to investigate all cases nationally (either standalone or with embedded FOD inspectors).
  - A central PSD team to commence initial enquiries and pass to FOD inspectors in divisions where a prosecution is likely (at the point where it is currently passed to DIS).

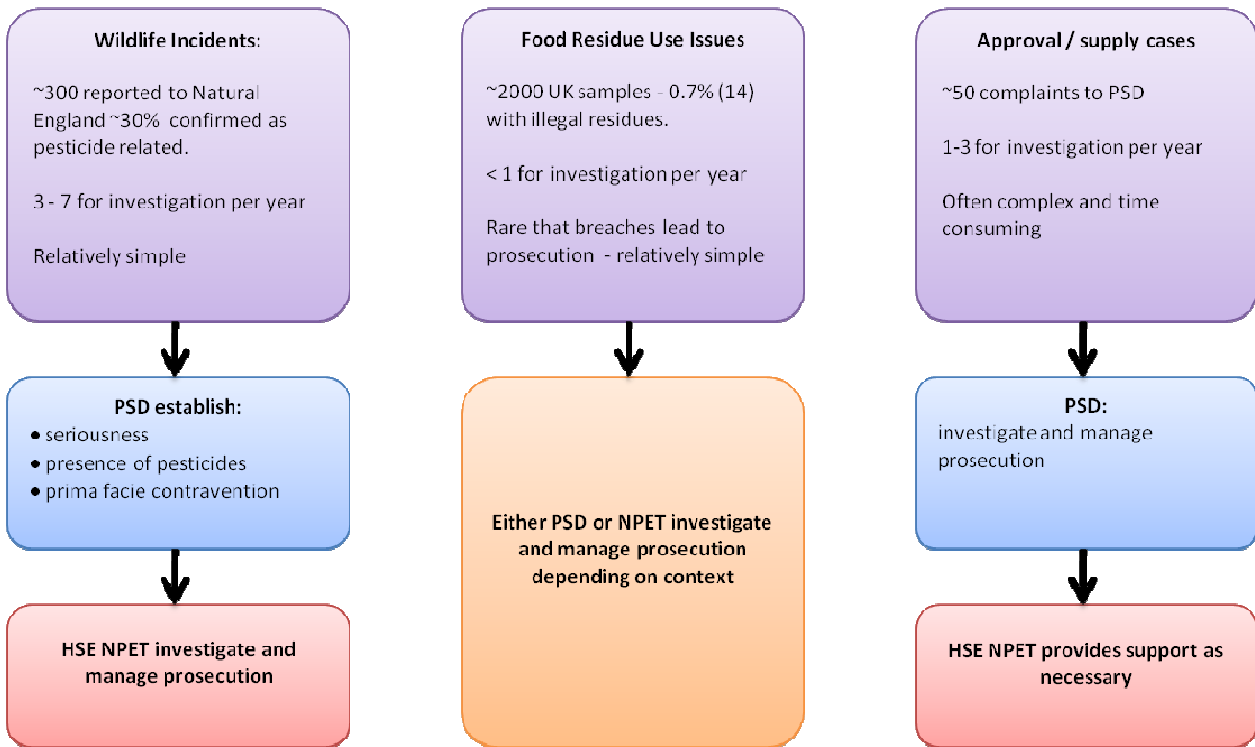
- A central PSD team to commence initial enquiries and pass to FOD inspectors who are members of a “virtual” National Pesticides Enforcement Team (NPET) as above. 2-3 inspectors per division will form part of NPET in addition to their existing role. This is the option recommended in this paper.

#### Discussion of recommended option

13. The NPET option builds upon the existing knowledge and skills of PSD and FOD to undertake investigation of serious incidents involving pesticides including those arising from wildlife incidents. Only those incidents which are likely to result in a prosecution would be passed to the NPET, with other incidents and complaints dealt with by PSD and/or Natural England officers with advice or enforcement notices where appropriate, as is currently the case. The reduction of accidents and ill-health in agriculture remains a priority in HSE, and investigation and prosecution of the most serious pesticide incidents will contribute further towards this priority. Thus this work is by no means “irrelevant” to FOD.
14. The NPET will consist of a virtual team, of 2-3 inspectors per division, and will reduce the training burden on FOD to low levels and maximise skill retention, although the limited number of wildlife cases will still result in the need for ongoing refresher training.
15. The NPET would not apply to Scotland and Wales, as wildlife investigations are devolved and carried out by a separate body from PSD, however supply/approval cases would continue to be investigated by PSD with cross-border co-operation.
16. The NPET will have lower travel time and associated costs, and allow a more rapid on-scene presence compared to a central PSD team. This is similar to the way FOD’s current virtual fairgrounds national inspection team works, which has proved an effective and successful structural model in practice.
17. As NPET will only relate to enforcement, FOD’s proactive: reactive ratio will shift slightly towards the reactive.
18. The risks and costs associated with the use of DIS will be removed.
19. Investigations involving illegal supply of pesticides are quite different in character from usage incidents, often necessitate considerable resources and require an in-depth knowledge of the approval and supply aspects of pesticides legislation. For this reason, it is suggested that a few PSD officers are trained to carry out the main work involved in these criminal investigations, and that the conduct and management of these will remain under PSD, rather than delegation to NPET, although there will be resource implications for PSD in assuming this new role. NPET, FOD Legal and Enforcement and Legal Advisers Office will continue to offer full support to the PSD officers as necessary.
20. The approval/supply investigations which may arise from REACH are likely to be very similar to those conducted by PSD, and it is envisaged that these two teams will work together towards common systems and policies in the longer-term.
21. The principles of the Enforcement Policy Statement would apply to pesticide cases as with all other HSE investigations, and enforcement decisions will be

made in accordance with the Enforcement Management Model (EMM). Additional guidance may be necessary to clarify EMM application where an animal has been harmed. The criteria for Independent Legal Oversight will be amended to ensure early involvement of solicitors where necessary.

*Overview of proposed amendments:*



**Consultation**

22. PSD management and officers, FOD agricultural and food sector and inspectors, CASU and REACH management, Legal and Enforcement Team, Legal Advisers Office. All are in agreement as to the preferred structural model for this work. PFPD have been consulted on the resource implications.

**Presentation**

23. None expected.

**Costs, Benefits, Financial/Resource Implications for HSE**

24. The number of cases referred to the NPET is anticipated to be in the region of 3 to 7 per year plus provision of support on an estimated 1 to 3 supply and use cases arising from information received by PSD and residues monitoring. This would require an estimated 85 to 200 inspector days per year in FOD at a cost of between £39k and £91k. The £150k full year saving from the termination of the DIS contract will fully fund the additional FOD effort and development of PSD’s in-house capability. There would be an additional 50 inspector days required from

FOD in the first year only for initial training of NPET inspectors on pesticides and relevant legislation.

25. However, the DIS contract saving may not be fully realised in the first year - HSE would continue to pay DIS until all training and HSE procedures are implemented. Also, transitional arrangements will be established, including funding of DIS to continue existing cases. This could mean a one-off additional resource requirement for PSD in 2009/10 but this is subject to the number of cases and is not expected to exceed £30k.
26. There is no right of audience for FOD inspectors or PSD officers under pesticides legislation, and so prosecutions will be undertaken by either solicitor agents or Legal Advisers Office as appropriate. Where successful, such costs incurred may be recovered from the defendant.

### **Environmental implications**

27. Following the merger with PSD, and in addition to the risks to humans, HSE assumed responsibility for the environmental protection provided by the proper regulation of pesticides not normally associated with workplace activities. Approval of this recommendation will ensure that UK consumers, operators and users of pesticides and the environment continue to receive adequate protection by the proportionate use of legal proceedings against suppliers of dangerous or unapproved pesticides, and those who fail to use or store pesticides in a safe manner.

### **Action**

28. SMT is requested to approve these recommendations so that further research and consultation can take place over the precise detail for the arrangements, and implementation of training and procedures can commence.