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HEALTH AND SAFETY COMMISSION

Amendment of Biocidal Products Regulations 2001

A Paper by Stuart Smith DR5

Board member lead: Giles Denham

Cleared by DDG on: 20 June 2005

Issue

1. The paper proposes an amendment of the Biocidal Products* Regulations to correct an error in the charging provisions they contain. The correction is necessary because the government is not recovering as much money as it should from the biocides industry, and in failing to do so is in breach of the Biocidal Products Directive. The Commission is being asked to agree that the draft amending regulations should go forward to the Minister.
2. Accompanying the paper are:
 - draft amending regulations – annex 1
 - draft submission to the minister – annex 2
 - draft letter to the Minister from the chairman – annex 3
 - a regulatory impact assessment – annex 4

Timing

3. Routine.

Recommendation

4. That the draft amending regulations at annex 1 are sent to the minister for approval.

Background

5. The draft ministerial submission at annex 2 explains that there is an error in the Biocidal Products Regulations 2001 (and the Northern Ireland equivalent). The Regulations provide for an annual levy to be charged to the biocidal products industry to cover government costs. People who currently supply biocidal products should be paying the levy but they have been unintentionally exempted. The draft amending

* Broadly speaking, 'biocidal products' means non-agricultural pesticides, disinfectants and preservatives.

regulations at annex 1 correct the mistake, and set up the charging regime as it was meant to be. Money taken from the excluded group so far has been repaid.

Argument

6. Recovery of competent authority costs is required by the Biocidal Products Directive 98/8/EC. The defect in the Regulations means that contrary to what we had believed we have not been complying with it. Amendment is therefore essential. The draft submission and the regulatory impact assessment explain that retrospective amendment, such that the intended charging regime would be deemed to have existed all along, is not a feasible option.

Consultation

7. The draft submission explains: (i) what has been done within government, and the special status of the Northern Ireland and Scotland authorities; (ii) that no immediate formal consultation of the industry is called for. Within HSE the Biocides and Pesticides Unit, Health Economics unit, Strategic Communications unit, Press Office and PEFD are content.

Presentation /communications

8. People in the excluded group have been told direct about the proposal, in the course of having their money refunded. The remainder of the biocidal products industry has been informed by way of a widely-distributed factsheet produced by HSE.
9. There are no significant presentational issues.

Costs and Benefits

10. The proposed amendment corrects the scheme under which money is transferred from the biocidal products industry to the government. Details and quantities are set out in the regulatory impact assessment. The principal benefit is that the amendment will complete transposition of the Biocidal Products Directive.

Financial/Resource Implications for HSE

11. The exclusion of product suppliers from the levy arrangements means that as things stand there is a shortfall in the amount we are collecting of about £118K/year. As soon as the amendment comes into force we shall be able to make good the deficit.

Other Implications

12. None.

Next steps

13. The Chair to send the attached draft letter with enclosures to the Minister.