

HSE's Arrangements for Handling Pesticide Investigations and Concerns

Statement

This statement supplements [HSE's Enforcement Policy Statement](#) (EPS) and shows how the principles of the EPS extend to the role of HSE in handling pesticide¹ investigations and concerns.

HSE's Role in Pesticides

The Health and Safety Executive is responsible for regulation of health and safety law across a wide range of work activities in Great Britain. Its stated aims are to protect the health, safety and welfare of people at work and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out. In the context of pesticides HSE is, by virtue of agency agreements between HSE and the Secretary of State, Welsh Ministers and the Scottish Government, responsible for the regulation, sale and use of pesticide products in Great Britain in premises for which it is the enforcing authority².

The regulatory framework for pesticides in Great Britain consists of two harmonised approval standards which separately address plant protection products and biocidal products. The legislation is intended to protect the health of human beings, non-target organisms, including animals and plants, and to safeguard the environment. Therefore, this is one area of work where HSE has a direct responsibility for dealing with risks to the environment.

HSE enforcement function

The regulatory framework for pesticides falls under a range of legislation, specifically the Plant Protection Products Regulations 2011 (PPPR), Plant Protection Products (Sustainable Use) Regulations 2012 (PPP(SU)R), the Food and Environment Protection Act 1985 (FEPA) and the Control of Pesticides Regulations 1986 (COPR). These are not relevant statutory provisions under the Health and Safety at Work etc. Act 1974 (HSWA) and as such the approach HSE takes to pesticide issues will vary according to the regulatory regime that is applicable to the product and the circumstances.

Responsibility for monitoring and enforcing pesticides legislation is shared between a number of organisations. HSE's responsibility relates to the storage, use, sale, supply, approvals, residues in food and illegal marketing of pesticides in connection with work activities for which it is the enforcing authority for health and safety. HSE has no responsibility for the private use of pesticides in domestic premises (home/garden use) but is responsible when pesticides are used in such premises as part of a work activity, such as when a contractor carries out pest control or timber treatment in a private house.

¹ Pesticides include plant protection products (most agricultural pesticides, such as herbicides, insecticides and fungicides) and biocidal products (including disinfectants, wood and other preservatives, biocidal paints, surface cleaners, rodenticides, anti-fouling products and pest control products).

² by virtue of the Health and Safety (Enforcing Authority) Regulations 1998

How HSE administers its enforcement responsibilities

HSE's approach to enforcing pesticide legislation is implemented through their Field Operations Directorate (FOD), Chemical Regulation Directorate (CRD) and Engagement and Policy Directorate (EPD) working together to deploy appropriate skills to the main areas of HSE's responsibility.

HSE's CRD manages the approvals regime for plant protection products and biocides. They also lead on enforcement arising from concerns and incidents about the sale or supply of pesticides in Great Britain (especially from wholesale sources and those that arise from formulation or label checking programmes). CRD also leads on matters relating to pesticides residues in food and those that arise from monitoring programmes, and the illegal marketing of products.

HSE's National Pesticides Enforcement Team (NPET) is organised by FOD and leads on the investigation of concerns and incidents related to the storage and use of pesticides. Typically, for plant protection products these matters will relate to storage or use on farms and include such activities as use by commercial contractors, drift from spraying operations, use of unapproved products or inadequate storage. For biocides, they will mainly relate to the storage and use of disinfectants, wood preservatives, rodenticides, anti-fouling products, biocidal paints, etc.

HSE's EPD assists with the operational strategy in relation to pesticides and coordinates the training for NPET and other inspectors that are involved in investigation and enforcement activities regarding pesticides.

CRD also coordinates the investigation of all cases of alleged poisoning of wildlife under the Wildlife Incident Investigation Scheme (WIIS), including those that arise from the approved use, misuse or abuse of pesticides. The WIIS monitors the impact of pesticides on wildlife and is not restricted to wild animals and birds but also covers bees, livestock and domestic animals. In England the scheme is run on HSE's behalf by Natural England under an Agency Agreement. Similar schemes operate in Scotland (Scottish Government) and Wales (Welsh Government) but do not involve HSE.

Following up concerns and incidents

HSE will follow up and investigate concerns and reported incidents involving pesticides in accordance with its [Complaints Operational Procedure](#) and [Investigation Operational Procedure](#).

The decision making criteria that HSE applies to concerns and incidents for HSWA related matters include consideration of whether there has been, or there has been the potential for, significant harm to people, and whether the matter raised appears to constitute a significant breach of law. For incidents notified under RIDDOR this includes a published set of incident selection criteria (ISC) upon which HSE bases decisions on whether or not to investigate incidents.

For pesticide concerns and incidents, HSE extends these principles to the actual or potential harm to the environment or wildlife. For incidents involving the supply, placing on the market or labelling of pesticides, the extent to which the circumstances may constitute significant breach of the law, or intent to deceive, will also apply to decisions on following up on the concern or incident.

As with incidents related to HSWA requirements, pesticide incidents which meet the ISC as mandatory for investigation will be selected for investigation. If incidents have caused actual environmental or wildlife impact, they will be treated as though the impact was to a person in relation to applying the ISC. For other concern or incident reports, initial enquiries will be made where necessary to establish the severity of the incident and the feasibility of investigation. A decision not to investigate a reported incident will be made by an Inspector at HSE Band 2 level or above. Incidents that are not within HSE's enforcement responsibility will be redirected.

The regulatory regime for pesticides is specifically intended to protect people, animals and the environment and, unlike HSWA, is not specifically linked to work activities. For this reason, HSE's policy on [HSWA Section 3](#) and the discretion on application of the HSWA to people that are not at work does not apply to concerns and incidents related to pesticides.

Enforcement Decisions/Principles of Enforcement

HSE's EPS and [Enforcement Management Model](#) (EMM) set out HSE's approach to all of its enforcement decisions. The principles of enforcement (proportionality, targeting, consistency, transparency, accountability) must be taken into account.

As with any other regulatory decision made by HSE, when applied to pesticide related concerns and incidents, our enforcement action will be proportionate to the health, safety and environmental risks and the seriousness of any breach. It will be targeted primarily on those whose activities give rise to the most serious risks, breaches of law, or where hazards are least well controlled. It will be focused on the dutyholders who are responsible for the risk or breach of law and who are best placed to control it.

Although the EMM is concerned primarily with risks to human health, its principles may also be applied when considering risks to the environment and animal health associated with pesticides. These will be treated with a similar level of seriousness and the same approach taken as with risks to human health and safety. HSE has produced [guidance for inspectors undertaking enforcement of pesticide legislation](#) and the strategy that we will use for applying the EMM in such circumstances.

Enforcement decisions related to offences in connection with placing on the market, supplying for use or labelling of pesticides will consider the extent of the breach and the strength of any evidence that indicates intent to deceive.

As with all enforcement decisions, action will be selected that is proportionate to the risk arising from, and the extent of, a breach of law. The action will ensure that dutyholders take action to deal immediately with serious risks, promote and achieve sustained compliance with the law and ensure that dutyholders who breach health and safety requirements may be held to account where appropriate. This includes punitive action, such as prosecutions.

Punitive action is not a response to every breach of the law. Punitive action (principally prosecutions) is guided by other factors in the EPS, including the principles of proportionality, targeting, etc. However, where there is robust evidence of poisoning from the misuse or abuse of pesticides by a person, a clear breach of pesticide law and the matter is not being dealt with by a more appropriate authority (e.g. the police), or where there is robust evidence of the placing on the market of

products that are not approved, with an intent to deceive, the initial enforcement expectation will be prosecution.

Enforcement Responsibilities Outside HSE's Remit

In general, HSE's enforcement principles are that where there is more specific legislation or deliberate criminal acts, HSE will defer to other more appropriate agencies, e.g. the police. This does not however rule out joint work and consideration of joint action with other enforcing authorities

There are also a number of other agencies with responsibilities related to pesticide matters and they may also be authorised to enforce pesticide legislation. These include:

Local Authorities

Local Authorities are responsible for enforcing pesticide legislation in premises for which they are the enforcing authority. They are responsible for dealing with complaints about the advertisement, sale and supply of pesticides at the retail end of the spectrum, for all those that relate to the advertisement of biocides and for handling complaints about the home/garden use of pesticides.

Office of Road and Rail (ORR).

ORR is responsible for enforcing pesticide legislation in premises for which it is the enforcing authority.

Environment Agency/Scottish Environment Protection Agency:

The Environment Agency (EA) in England and Wales and the Scottish Environment Protection Agency (SEPA) have no direct responsibilities for enforcing pesticide legislation but may be able to act under other environmental legislation where damage to the environment has occurred or is likely to occur from the storage and use of pesticides. They will deal with all reports of water pollution, including those resulting in the distress/death of fish, irrespective of the cause. They also have an increasing interest in the storage and use of pesticides on farms as the water environment is particularly sensitive to pesticides and specific waste regulations apply to agriculture.

Natural England

Natural England Inspectors are authorised to carry out WIIS investigations and issue enforcement notices on behalf of HSE's CRD under an Agency Agreement.. They deal with all cases of suspected wildlife incidents involving pesticide in England.