

# OPERATIONAL GUIDANCE (OG)

## Title

### Enforcement of Pesticide Legislation

#### *Open Government status*

Open

#### *Target audience*

Heads of Operations, Inspectors, Complaints Officers, NPET, CRD Compliance Team, Local Authority (LA) Inspectors.

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#### *Summary*

1. This document gives guidance on the enforcement of pesticides legislation and the application of the Enforcement Management Model (EMM) to potential offences involving pesticides.

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## ***Introduction***

2. This guidance provides HSE/LA staff with a framework to assist in making enforcement decisions in relation to potential offences involving pesticides.
3. HSE's National Pesticides Enforcement Team (NPET) is primarily responsible for FOD operational enforcement through inspection and investigation of incidents and complaints relating to storage and use of pesticides/biocides. NPET operates as a full virtual team with the function of leading on the investigation of such concerns and incidents. All FOD pesticides/biocides enforcement should be carried out by or under the instruction of NPET as these staff are appropriately warranted and will receive suitable training. NPET may also provide support to HID staff where relevant.
4. HSE's Chemical Regulation Directorate (CRD) leads for HSE on matters to do with the import, supply and placing on the market of pesticides, and will normally lead for HSE in the investigation of incidents related to these issues.
5. The definition of pesticides includes plant protection products (most agricultural pesticides) and biocidal products (including disinfectants, wood and other preservatives, biocidal paints, surface cleaners, rodenticides, anti-fouling products and pest control products, etc).
6. Given the wide range of biocidal products and the industries in which they may be used, this guidance will be relevant to inspectors of all disciplines.

## ***Action***

7. HSE/LA staff should follow the guidance in this document when deciding on enforcement action in relation to offences involving pesticides.
8. All pesticide/biocide matters falling within FOD's remit should be referred to NPET. All those within CRD's areas of responsibility should be passed to CRD. The Agriculture HELP Team should be contacted in cases of doubt (see para 89 for contact details).

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## **Background**

### **Legislation**

9. The regulatory framework for pesticides in Great Britain (GB) consists of two harmonised approval systems which separately address plant protection products and biocidal products (previous regulatory frameworks have been superseded by these).

10. Both systems are intended to protect the health of human beings, non-target organisms, including animals and plants, and to safeguard the environment. This means that this is one area of work where HSE has a direct responsibility for dealing with risks to the environment.

11. The legislation requires plant protection and biocidal products to be approved, authorised or permitted (“approved”). Further requirements relate to their sale, purchase, storage and use.

12. The legislation that applies to pesticides is dependent on the product being used (is it a plant protection product or a biocide); where it is being used (some products can be used for either plant protection or as a biocide); and, for some biocides, whether it is under the current legislation or transitional arrangements (in which case different legislation may apply). The powers available to inspectors are different depending on whether they stem from plant protection products legislation or from HSWA and will depend on the product and circumstances of use. It is critical that inspectors understand this from the earliest possible opportunity in any intervention to ensure that powers are used appropriately and that actions are not *ultra vires*.

13. The legislation that may apply is set out in Appendix 1. The following paragraphs give a broad indication of which set of legislation applies and should be considered in conjunction with the detail of the Appendix.

### **Plant protection products**

14. The principal legislation are the Plant Protection Products Regulations 2011 (PPPR 2011) and the Plant Protection Products (Sustainable Use) Regulations 2012 (PPP(SU)R 2012). Both the PPPR 2011 and the PPP(SU)R 2012 should be considered together when dealing with offences relating to plant protection products.

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These regulations are not relevant statutory provisions under HSWA and inspectors enforcing these regulations do so with different powers to HSWA. The legislation is enforced by HSE in England and Wales under agency agreements. HSE is not currently the enforcing authority in Scotland.

### **Biocidal products**

15. The main legislation for biocidal products stems from directly applicable EU legislation for the placing on the market of biocidal products, and the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulation 2013. This legislation is enforced under HSWA powers across Great Britain.

16. However, for a number of reasons, not all biocidal products are approved under BPCR 2013. Some remain approved under the **Control of Pesticides Regulations 1986 (as amended) (COPR)**, while others have been issued with a **Certificate of Exemption (CoE)** under BPCR 2013 while they go through an authorisation/registration process which can take up to two years.

17. For biocidal products that remain approved under COPR and which are not subject to a CoE, the **Food and Environment Protection Act 1985 (FEPA)** should be used for enforcement purposes. However, any failure to comply with the conditions of the CoE (e.g. COPR conditions) is a breach of **EU BPR** and again, under BPCR 2013, **HSWA** should be used for enforcement purposes.

18. It is important, particularly for biocidal products, that Inspectors check the product's approval status to determine which legislation applies and in cases of doubt should contact Chemicals Regulation Directorate's (CRD) Information Management Team (see para 89 for contact details).

### **Relevant legislation**

19. In addition to the legislation that is directly relevant to the authorisation/approval for use and supply, and the conditions of use, other aspects of health and safety legislation may also be applicable to users and suppliers. .The **HSWA**, the **Management of Health and Safety at Work Regulations 1999 (MHSWR)**, the **Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH)** and **Regulation (EC No. 1907/2006) concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)** may also

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apply in relation to the risks to human health from the storage and use of pesticides. Inspectors should select the most appropriate legislation when considering enforcement action. This may require very careful consideration depending on powers that have been exercised during any investigation, and when considering whether or not FFI applies (see Enforcement Responsibilities below).

### **Enforcement Responsibilities**

#### **Enforcement functions – who does what**

20. HSE carries out enforcement functions under PPPR 2011, PPP(SU)R 2012 and FEPA/COPR in England and Wales. These functions are conferred on HSE by way of Agency Agreements with the Secretary of State and with the Welsh Ministers.

21. The Agency Agreements do not confer functions in relation to enforcement in Scotland or Northern Ireland. In Scotland, these are carried out by the Scottish Government Rural Affairs, Environment and Services Directorates. An Agency Agreement with the Scottish Government is imminent.

22. The above regulations (PPPR 2011, PPP(SU)R 2012 and FEPA/COPR) are not relevant statutory provisions under HSWA (and therefore Fee For Intervention does not apply) . However, the Agency Agreements state that where HSE is the enforcing authority for health and safety legislation by virtue of Regulation 3 of the Health and Safety (Enforcing Authority) Regulations 1998, it will also enforce pesticides legislation. Similarly where the local authority is the enforcing authority for health and safety legislation under the 1998 regulations, they will enforce pesticides legislation.

23. For biocidal products authorised under BPR, enforcement powers are exercisable by HSE throughout GB as if the regulations were health and safety regulations under HSWA.

#### **Enforcement Responsibilities within HSE – FOD and HID**

24. In practice, the majority of complaints referred to HSE relate to concerns about the storage and use of pesticides and will fall to either Field Operations Directorate (FOD) or Hazardous Installations Directorate (HID) depending on the type of premises.

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25. NPET will investigate complaints and incidents related to the storage and use of pesticides on behalf of FOD (in premises for which it is the enforcing authority).

26. HID is responsible for pesticide investigations involving HID-enforced premises. FOD's NPET will provide support to HID Inspectors in such circumstances.

27. For plant protection products, the majority of complaints and incidents will relate to storage and use on farms or the activities of commercial contractors, such as drift from spraying operations, and will therefore fall to FOD.

28. For biocidal products, complaints and incidents mainly relate to the storage and use of disinfectants, wood and other preservatives, pest control products (e.g. rodenticides, vertebrate repellents), anti-fouling products, biocidal paints, surface cleaners, etc. Given the wide range of products and the industries in which they may be used, these complaints/incidents are likely to fall to FOD, CRD or HID.

29. FOD is also responsible for enforcement relating to the use of pesticides in domestic premises by a contractor.

30. All incidents resulting in the potential pollution of watercourses should also be referred to the Environment Agency (and investigated jointly if appropriate). ). All cases of spraying near to watercourses, irrespective of any damage to aquatic life, may also be investigated by FOD.

### **Enforcement Responsibilities within HSE – Chemicals Regulation Directorate (CRD)**

31. Within HSE, CRD manages the approvals regime for plant protection products and is responsible for managing enforcement cases that arise from complaints/incidents about:

- The sale or supply of pesticides in England and Wales, especially from wholesale sources and those that arise from formulation or label checking programmes
- Pesticides residues in food and those that arise from residues monitoring programmes
- Illegal marketing of products

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32. Complainants should be referred to the CRD Information Management Service. FOD's National Pesticides Enforcement Team (NPET) may be involved in any subsequent investigation/follow up.

33. CRD is also responsible for coordinating the investigation of all cases of alleged poisoning of wildlife under the Wildlife Incident Investigation Scheme (WIIS) including cases that arise from the approved use, misuse or abuse of pesticides. The scheme 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, CRD has overall responsibility for the policy of the scheme which is run on HSE's behalf by Natural England under a Memorandum of Understanding. The Regulatory Improvement and Specialist Services Team in Natural England and, in some cases FOD's NPET will assist CRD with these investigations. All suspected cases of illegal poisoning should be reported to Natural England. Similar schemes operate in Scotland, Wales and Northern Ireland but do not involve HSE.

34. CRD also manages the approvals regime for biocidal products. The majority of complaints about advertisement, sale or supply of biocidal products are referred to local authorities, although HSE will be the enforcing authority in certain cases.

### **Enforcement Responsibilities – Local authorities**

35. LAs are responsible for enforcement (in premises for which they are the enforcing authority) that arise from complaints about:

- Storage and use of plant protection products and biocidal products on LA enforced premises;
- Sale, supply and advertisement of pesticides (also CRD);
- Placing on the market through a retail outlet; and
- The use of pesticides in a non-work related activity (e.g. in domestic premises).

### **Enforcement Responsibilities – Others**

36. A number of other agencies are authorised to enforce pesticides legislation, including Natural England, the Office of Rail Regulation (ORR) and the Office for Nuclear Regulation (ONR).

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37. Natural England runs the Wildlife Incident Investigation Scheme (WIIS) on HSE's behalf in England under a Memorandum of Understanding. CRD coordinates the investigation of all cases of alleged poisoning of wildlife under the 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. Similar schemes operate in Scotland (Scottish Government) and Wales (Welsh Government) but do not involve HSE

38. HSE/LAs do not have enforcement responsibility for activity relating to a person in the course of an undertaking for which the ORR is made the enforcing authority by regulation 3(1) of the Health and Safety (Enforcing Authority for Railways and other Guided Transport Systems) Regulations 2006 (read together with any agreement made pursuant to section 2 of, and paragraph 7 of Schedule 3 to, the Railways Act 2005).

39. The Environment Agency (EA) (in England and Wales) and the Scottish Environment Protection Agency (SEPA) deal with all reports of water pollution, including those resulting in the distress or death of fish. In all other cases of alleged or potential environmental damage resulting from pesticide storage or use, the notifier should be informed that HSE will liaise with either the EA or SEPA, as appropriate.

40. In cases of doubt, inspectors and complaints officers should consult CRD's Information Management Service.

### **Powers of Authorised Officers**

41. Inspectors or authorised persons are permitted to exercise powers under the relevant pesticides legislation and are provided with a certificate of authorisation (e.g. a warrant) which will set out their powers. Only some HSE Inspectors are warranted under PPPR 2011 and PPP(SU)R 2012 (if unsure, the 'Extent of Powers' section of the warrant should be checked).

42. HSE authorises Inspectors under:

- Regulation 7 of PPPR 2011;
- Regulation 20 of PPP(SU)R 2012; and

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- Section 19 and Schedule 2 of FEPA

pursuant to its Agency Agreements with the Secretary of State and the Welsh Ministers (agreement with Scottish Ministers is pending).

43. Authorised persons have the powers under PPPR 2011 and PPP(SU)R 2012 to:

- Enter any premises (excluding private dwellings) where there are reasonable grounds to believe that any plant protection product is being, or has been, applied or stored on or in them, transported on or applied by means of them and that it is necessary to enter for the purposes of ensuring that the regulations are complied with;
- Search for any item, if necessary using reasonable force;
- Open or examine, or both, anything that is on, attached to or otherwise forms part of the premises, if necessary using reasonable force;
- Take any persons or equipment or materials he or she considers necessary for the enforcement of the Regulations;
- Open any container, if necessary using reasonable force;
- Carry out any searches, inspections, measurements and tests;
- Take samples;
- Have access to, and inspect and copy any documents, books or records (in whatever form they are held) if there is reason to believe they may be relevant in connection with the enforcement of the regulations and remove them to enable them to be copied;
- Photograph or copy anything if there is reason to believe it may be relevant in connection with the enforcement of the regulations;
- Seize any computers and associated equipment for the purpose of copying documents provided they are returned as soon as possible;
- Require information on formulations and the effects or use of any substance;
- Require answers to questions and the person to sign a declaration of the truth to the answers provided; and
- Issue an enforcement notice.

44. The power (under PPPR) to seize or dispose of pesticides or anything treated with a pesticide has also been delegated to HSE but not to authorised HSE Inspectors. **Appendix 3** provides details on the protocol HSE Inspectors must follow

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before taking any steps to seize or dispose of pesticides. It is important that any risks to personal health and safety are considered when using powers such as opening or examining, sampling or seizing materials

45. The above powers vary slightly to those under FEPA and are significantly different to those under s20 HSWA – both of which may be used for biocide-related enforcement. Inspectors should familiarise themselves with the relevant legislation before taking action, in particular regarding powers of entry, seizure, etc. Where there is any doubt, they should contact CRD's Information Management Service or the Agriculture HELP Team.

46. Most offences under PPPR 2011, PPP(SU)R 2012 and FEPA are triable either way. Offences in PPPR 2011 and PPP(SU)R 2012 that are only triable summarily are:

- Failure to comply with a Notice;
- Failure to comply with any requirement made by an authorised person;
- Failure to keep the required records;
- Where an authorisation holder does not supply information on potentially harmful or unacceptable effects.

47. Prosecution is initiated and pursued in the same way as under HSWA. However for offences liable to summary conviction only, inspectors should ensure that proceedings are brought within six months of the date of the alleged offence.

48. Under PPPR 2011 and PPP(SU)R 2012 authorised persons have the right of audience in Magistrates Courts in England and Wales. This is different to FEPA, where inspectors **do not** have the right of audience and Solicitor Agents should be appointed to conduct proceedings.

### **Enforcement notices**

49. There is one type of Enforcement Notice for each of the three sets of non-HSWA legislation relating to pesticides (PPPR 2011, PPP(SU)R 2012 and FEPA).

50. Inspectors should note that '*improvement type*' Enforcement Notices are not restricted to a 21 day minimum period following service during which there is a right of appeal, as there is no appeal process in PPPR 2011/PPP(SU)R 2012/FEPA.

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However recipients do have the right to seek a Judicial Review of an inspector's decisions and actions.

51. Failure to comply with a Notice is an offence and is a summary offence.

52. For biocidal products authorised under BPR, an appropriate HSWA notice should be issued.

### Enforcement of pesticide legislation

#### Product Conditions of Approval

53. Pesticides can only be placed on the market, stored or used in GB if they have been authorised (approved) for these or other, more specific purposes e.g. research. The approval process is managed by CRD in respect of both plant protection products and biocidal products.

54. As part of the approval process, conditions are laid down for every pesticide product and each is given a unique approval number. These Conditions of Approval should be printed on the product label in the 'Important Information Box' (or for BPR/COPR-approved biocidal products in the 'Statutory Conditions of Use' box).

55. Failure to comply with any of these conditions or to place on the market, use or store an unapproved product is an offence.

56. A database of approved plant protection products can be found on the [HSE plant protection website](#) or by contacting CRD's Information Management Service. Similarly, details of approved biocidal products can be found on the [HSE biocides website](#) or by contacting Biocides Enquiries (see para 89 for contact details).

#### Product Labels

57. The information in the 'Important Information Box' will include:

- MAFF/ HSE or MAPP number;
- The approved 'Field of Use' of the product e.g. agriculture, home garden, vertebrate control;
- The crops or situations for which treatment is permitted;

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- The maximum individual dose/maximum concentration;
- The maximum number of treatments/maximum total dose;
- The latest time of application or harvest interval;
- Other specific restrictions relating to a particular pesticide;
- Instructions (e.g. read the label before use, using this product in a manner that is inconsistent with the label may be an offence, follow the code of practice for using plant protection products, etc).

58. Inspectors should note that pesticide products are now subject to the provisions of CLP (the European Regulation (EC) No 1272/2008 on Classification, Labelling and Packaging of Substances and Mixtures).

### **Sustainable Use Requirements (plant protection products only)**

59. In addition to the product's conditions of approval, there are also a number of specific requirements in PPP(SU)R 2012 which must be complied with by those seeking to use, store, sell or purchase any plant protection product (PPP). Failure to comply with any of these requirements is also an offence.

60. These measures are intended to ensure that those who work with PPPs are competent for the job, that their equipment is fit for purpose, that they have the necessary information, and take the necessary precautions, to minimise the risks. The regulations require that:

- a) Those who use PPPs in their work should have a certificate showing that they have been trained for the job ('specified certificate') or be working 'under supervision' (defined within the regulations as "under the direct and personal supervision, and in the presence of, a person who holds a specified certificate, where such supervision is being provided for the purposes of training"). Certain exemptions previously provided by legislation (and known as 'grandfather rights') ceased to have effect on 25 November 2015. Now all users of PPPs authorised for professional use must have a specified certificate – see *Regulation 8*;
- b) Those who use, handle or store PPPs must take all reasonable precautions to protect human health and the environment. Applications must be confined to the area intended to be treated and products stored in areas constructed in such a way so as to prevent unwanted releases – see *Regulations 10 & 17*;

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- c) Where there is a risk to the aquatic environment or drinking water and where there is a choice of products users are required to, so far as is reasonably practicable, give preference to particular types of products which pose a lower risk – see *Regulation 10*;
- d) Pesticide users must ensure that the amount of PPP used and the frequency of use are as low as reasonably practicable in the following places: in areas used by the public, by vulnerable groups or in the vicinity of healthcare facilities; in conservation areas; on certain man-made surfaces close to surface water or groundwater or with a high risk of run-off to surface water or sewage systems; or in recently treated areas which will be accessible to agricultural workers – see *Regulation 10*;
- e) Those who own or lease equipment that is used to apply PPPs must ensure that it passes inspection at specified intervals in order to ensure that it is working properly and should not permit use of the equipment by a professional user unless it has passed inspection – see *Regulations 11, 12, 13 & 14*;
- f) Any aerial spraying requires a permit and such permission will only be granted in limited circumstances. The pilot and the permit holder must comply with certain conditions. Applications for permits must not contain false information – see *Regulations 15 & 16*;
- g) Those who sell PPPs to end-users for use in:
  - i) Work situations (professional products), and
  - ii) Domestic or non-work situations (non-professional products)

must have sufficient staff who hold specified certificates to provide information at the time of sale. Micro-distributors are exempt. These requirements aim to ensure that people purchasing these products can be given adequate information on their use and how to reduce risks in order to protect human health and the environment – see *Regulation 9*;

- h) The purchase of PPPs for use by a person who does not hold a specified certificate or is working under supervision is prohibited - see *Regulation 9*;
- i) The Regulations also prohibit:

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- i) The combining or mixing for use of two or more PPPs unless certain conditions are met, and;
- ii) The combining or mixing for use of two or more PPPs which are anticholinesterase compounds (certain types of products that can cause acute nerve toxicity) unless such a mixture is expressly permitted by the conditions of an authorisation – see *Regulation 17*.

61. A table of the potential offences likely to be dealt with by inspectors in relation to pesticides is included at **Appendix 2**.

### **Application of the EMM**

62. HSE's Enforcement Management Model (EMM) is a framework which helps inspectors make enforcement decisions in line with HSE's Enforcement Policy Statement (EPS). The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation. The EPS is also supplemented by a statement setting out arrangements specifically in relation to pesticides and biocides [HSE's arrangements for handling pesticide investigations and concerns](#).

63. The original EMM was drafted to deal with risks to safety. Application of the EMM to general health issues and specifically to the health risks from chemicals has been further addressed in OC130/5 "EMM General Guidance on Application to Health Risks" and OC273/19 "EMM Application to Chemical Risks".

64. For the purposes of enforcement in relation to pesticides, the use of the EMM should be extended to cover risks to the environment and wildlife and these should be considered as though they were risks to human health and safety. These should not be simply seen as compliance/administrative matters

65. Inspectors should apply this guidance when making enforcement decisions:

- As supplemented by OCs 130/5 and 273/19 where risk to human health is at issue;
- Where risk to non-target species or the environment is under consideration;
- Where the sale or supply of expired or counterfeit pesticides is suspected (CRD);

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- Where the Maximum Residue Levels (MRLs) of pesticides permitted in food have been exceeded (CRD).

66. Where inspection or investigation highlights problems with both risk-based and compliance/administrative elements or permissioning through the conditions of authorisation of the product, inspectors should decide on action principally in relation to the control of risk. However, all the factors will need to be considered in reaching a final enforcement decision.

### **Human Health and COSHH**

67. Given the wide variety of types of pesticide products and their various additional chemical co-formulants (constituents) it is difficult to give generic guidance relating to human health risk.

68. The pesticide regimes are based on a system of product approval or authorisation. As part of the approval process, applications are subjected to a rigorous evaluation covering a range of matters including risk to operators (users), bystanders (members of the public) and the environment.

69. Given this evaluation, the regimes are predicated on the assumption that an approved product, stored or used in accordance with the specified Conditions of Approval and the general requirements of PPP(SU)R 2012 (for storage, use, aerial application. etc) applicable to the activity should not pose unacceptable risk to the health of human beings, creatures or plants (other than the target species) or to the environment.

70. Whilst the generic risks to human health from a product will have been assessed and guidance on control measures generated by the approvals process, the particular circumstances under which a pesticide is to be used still need to be considered as part of a suitable and sufficient assessment of the risks to health under COSHH. Compliance with the Conditions of Approval and other requirements should not be accepted as proof of adequate control but together with other relevant information such as that contained in Safety Data Sheets (SDS) will inform the COSHH assessment which should address the risk from the specific way(s) in which the product is being handled and used.

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71. Inspectors should note that the product label will contain much of the information required to evaluate the quality of a COSHH assessment. In practice, the approval and the directions for use on the product label are based on an evaluation of the product formulation as a whole and not on individual components.

72. Determination of enforcement action for risks to human health associated with pesticides is the same as for risks from any other substance hazardous to health. The COSHH assessment in conjunction with the advice given in OCs 130/5 and 273/19 will lead to a judgement on the **actual risk to health**.

73. Inspectors should refer to the EMM to assess the risk gap (Table 2.1) and then determine the initial enforcement expectation (Table 5.1) in the usual way.

### **Compliance and administrative arrangements**

74. Compliance and Administrative Arrangements are those legal requirements which are not in themselves risk based, i.e. do not directly result in the control of risk. These arrangements are generally defined by law or supporting approved Codes of Practice. Examples of potential offences of this type include supplying an unapproved pesticide or exceeding the Maximum Residue Level (MRL).

75. European Community (EC) Statutory MRLs are trading standards set under EC Regulation 396/2005 and listed in Annexes to that Regulation. Where these EC MRLs are set everyone involved in the marketing of food or feed within the EU must comply with them. MRLs only apply to commodities once they are placed on the market, i.e. they do not apply to crops in the field. Where a plant protection product active substance is not listed under regulation 396/2005 a default MRL level of 0.01 mg/kg applies.

76. The presence of residues of an active substance of a plant protection product below the MRL, even where that active substance is not approved in the UK is not a breach of the regulations governing MRLs and such commodities may be legally placed on the market, although such residues may evidence illegal use under pesticides regulations. Where an MRL breach is sufficiently serious and the residue in the commodity poses a risk to human health HSE will co-operate with the Department of Health and Food Standards Agency to ensure affected commodities are removed from the market place.

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77. Professional users of plant protection products are required under Article 67 of Regulation 1107/2009 to keep records, for at least 3 years, of the plant protection products they use. The records must as a minimum contain the name (including authorisation number) of the plant protection product, the time and the dose of application, the area and the crop where the plant protection product was used. Failure to keep such records is an offence under PPPR 2011 Regulation 23.

78. In practice these issues should be handled in exactly the same way under pesticide legislation as under other health and safety law. Inspectors should refer for guidance to the EMM Step 4 and in particular to Table 4 'Compliance and Administrative Arrangements' and Table 5.2 'Compliance with Administrative Arrangements: Initial Enforcement Expectation' to determine the initial enforcement expectation.

### **Permissioning arrangements**

79. In the case of illegal marketing of pesticides by those who hold an authorisation it would be appropriate to apply the permissioning section of the EMM.

### **Benchmarks**

80. The defined standard for an activity involving an approved pesticide product is that it should be used in strict accordance with the product's Conditions of Approval and the appropriate requirements set out in PPP(SU)R 2012. Additionally there is guidance on the use of pesticides in the Codes of Practice which may be published by the relevant Competent Authority.

81. Established and interpretative standards include HSE guidance HSG251 '*Fumigation – Health and safety guidance for employers and technicians carrying out fumigation operations*', Agriculture Information Sheet (AIS)16 '*Guidance on storing pesticides for farmers and other professional users*' and AIS22 '*Gassing of rabbits and vertebrate pests*'.

82. In practice, if duty holders are complying with relevant guidance, the residual risk from the storage and/or use of pesticides should lie within the Nil/Negligible range of the EMM.

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83. Risks to the environment and animal health associated with pesticides should be treated with a similar level of seriousness and the same approach taken as with risks to human health and safety. Although the EMM is concerned primarily with risks to human health, its principles may also be applied when considering risks to the environment and to animal health.

84. Decisions on environmental issues should therefore be based on the potential impact on the environment (land, water or wildlife) from work activities involving pesticides. Inspectors will need to take into consideration factors such as the hazard classification and toxicity of substances, the type of environment (e.g. whether the site has conservation status e.g. Site of Special Scientific Interest, contains protected species, proximity to water bodies such as rivers/lakes or groundwater), the amount of pesticide misused/abused, etc. to determine risk gap. The principles of proportionality to risk and to the extent of any breach that are contained in the EPS and the EMM are applicable generally to all our enforcement activities, including those in the environmental area.

85. Enforcement decisions should be based on risk levels and compliance with the benchmark standards (referred to in paragraphs above) with advice on risks to wildlife being sought from Natural England and/or CRD where appropriate. In these cases, it is also appropriate to take into account the intent to cause harm and to classify incidents in terms of the approved use, the misuse or the abuse of pesticides.

86. In the case of spraying pesticides near to watercourses, the initial enforcement action should be determined by assessing the level of compliance with the DEFRA guidance '*LERAP: Horizontal Boom Sprayers*' and '*LERAP: Broadcast Air-assisted Sprayers*'. These are defined/established standards for the protection of water courses in connection with the application of pesticides to arable crops and orchards/hops respectively. Reference should also be made to the advice in the DEFRA Code of Practice in any case in which water may have been contaminated. However, Inspectors should be aware that some pesticides have specific approval for treating aquatic weeds.

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### **The final enforcement decision**

87. Dutyholder and strategic factors should be considered in order to reach a final enforcement decision.

88. Inspectors must apply the principles of the EMM whenever they make an enforcement decision for which they have the authority and formally record the outcome when required.

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### Contacts

89. Below is a list of contact details for helpdesks, websites and databases which have been referred to in this guidance:

<b>Chemicals Regulation Directorate (CRD)</b>	
CRD Information Management Service	email <a href="mailto:crd.information.management@hse.gsi.gov.uk">crd.information.management@hse.gsi.gov.uk</a>
Biocides Enquiries	<a href="http://www.hse.gov.uk/biocides/contact.htm">www.hse.gov.uk/biocides/contact.htm</a> email <a href="mailto:biocidesenquiries@hse.gsi.gov.uk">biocidesenquiries@hse.gsi.gov.uk</a>
Pesticides databases	<a href="http://www.hse.gov.uk/pesticides/topics/databases.htm">www.hse.gov.uk/pesticides/topics/databases.htm</a>
Biocides database (BPR approved)	<a href="http://www.hse.gov.uk/biocides/eu-bpr/authorised-approved-biocides.htm">www.hse.gov.uk/biocides/eu-bpr/authorised-approved-biocides.htm</a>
Biocides database (COPR approved)	<a href="http://www.hse.gov.uk/biocides/copr.approved.htm">www.hse.gov.uk/biocides/copr.approved.htm</a>
<b>Engagement and Policy Directorate – Agriculture, Health, Engagement, Livestock and Pesticides Team</b>	
Agriculture HELP Team	email <a href="mailto:agriculture@hse.gov.uk">agriculture@hse.gov.uk</a>
<b>Natural England (single contact point for all UK wildlife/poisoning incidents)</b>	
Incident reporting centre	Tel. 0800 321 600
<b>Environment Agency</b>	
Incident reporting centre	Tel. 0800 807 060

90. This guidance had been produced jointly by CRD and the Agriculture HELP Team. Any enquiries on this guidance should be directed to either the Agriculture HELP Team or to CRD.

# OPERATIONAL GUIDANCE (OG)

## ***Appendix 1: Relevant Legislation***

### **Plant Protection Products**

The primary legislation is Regulation EC 1107/2009 of the European Parliament and of the Council which deals with the placing on the market and general use of plant protection products. Although directly applicable in the United Kingdom (UK), it has been supplemented in GB by the Plant Protection Products Regulations 2011 (PPPR 2011), which set out powers of enforcement, offences and penalties.

In parallel with the above, Directive 2009/128/EC of the European Parliament and Council deals with broader use-related issues, such as certification requirements, storage and inspection of equipment. It has been implemented in GB by the Plant Protection Products (Sustainable Use) Regulations 2012 (PPP(SU)R 2012).

### **Biocidal Products**

The primary legislation is Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (EU BPR). The EU BPR is directly applicable in Member States and does not need to be implemented.

However, the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013 (BPCR 2013) formally appoint competent authorities and establish enforcement arrangements in Great Britain. Similar legislation applies in Northern Ireland. Competent authority functions have been delegated to HSE for the whole of the UK, under Agency Agreements.

In respect of Great Britain, Regulation 8 of BPCR 2013 makes provision for the enforcement of the EU BPR and of Regulations 12 (relating to labelling requirements) and 13(2) (authorisation of biocidal products containing "essential use" active substances) of BPCR 2013, by applying to them (with certain modifications and exceptions) the enforcement and penalty provisions of the Health and Safety at Work etc. Act 1974 (HSWA) as if they were health and safety regulations for the purposes of HSWA.

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The EU BPR repealed and replaced the Biocidal Products Directive 98/8/EC (BPD), but transitional arrangements apply to active substances already approved and biocidal products already authorised under the BPD, and for substances and products for which evaluations were not completed when the EU BPR took effect on 1 September 2013, as well as for certain other scenarios (see Articles 89-95 of the EU BPR). The transitional arrangements are complex. They are described on the HSE biocides web pages.

A CoE is issued under the BPCR 2013, but the conditions contained within the CoE are likely to reference approval conditions established in COPR. This allows the product to stay on the market and be used subject to the same conditions relating to its supply, storage and use as applied under COPR. However, any failure to comply with the conditions of the CoE (e.g. COPR conditions) is a breach of EU BPR and again, under BPCR 2013, HSWA should be used for enforcement purposes.

### **REACH**

REACH is a European regulation which applies to substances manufactured or imported into the EU in quantities of one tonne or more per year. Almost every business in the UK will have a duty under REACH as a manufacturer, importer, distributor, supplier or downstream user. However, the extent of the duties it imposes will vary significantly, depending on the duty-holder's activities.

REACH requires any manufacturer or importer of a substance in quantities of one or more tonnes per year to register that substance with the European Chemicals Agency (ECHA). Registration involves submitting a dossier of information to ECHA on the substance's properties, uses and risk management measures. It also puts duties on suppliers and users of chemicals, primarily to ensure that the information gained through registration is passed down the supply chain, and effectively applied to control risks. Further information about REACH, its enforcement, and the interaction between REACH and COSHH can be found on the REACH intranet site.

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## Appendix 2 – Examples of potential offences

### Part 1 – Plant Protection Products, authorised under PPPR 2011

Potential offence (this list is not exhaustive)	Breach / Offence
Use – Use of unauthorised products	Breach: PPPR Regulation 9 Offence: PPPR Regulation 23(a)
Use – Any failure to comply with the conditions of authorisation or requirements specified on the product label in relation to use	Breach: PPPR Regulation 12 Offence: PPPR Regulation 23(a)
Use - Any failure to ensure that all reasonable precautions are taken to protect human health and the environment	Breach: PPP(SU)R Regulation 10(1)(a) Offence: PPP(SU)R Regulation 24(c)
Use - Failure to keep product to target	Breach: PPP(SU)R Regulation 10(1)(b) Offence: PPP(SU)R Regulation 24(c)
Use – Failure to comply with Reg 10(1)(c) which requires persons using a PPP in 'listed places' to ensure the amount and frequency of use are as low as reasonably practicable.	Breach: PPP(SU)R Regulation 10(1)(c) Offence: PPP(SU)R Regulation 24(c)
Use – IF the PPP represents a risk to the aquatic environment/drinking water and there is more than one authorised product THEN the person must use or cause [someone?] to use the least dangerous product. Failure to do so is an offence.	Breach: PPP(SU)R Regulation 10(3) Offence: PPP(SU)R Regulation 24(c)

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<p>Use – Aerial spraying – Any failure to comply with Reg 15 (permit authorisation and permit conditions).</p>	<p>Breach: PPP(SU)R Regulation 15 Offence: PPP(SU)R Regulation 24(h)</p>
<p>Record keeping – Failure by user to keep records of products used for a period of at least 3 years.</p>	<p>Breach: PPPR Regulation 19 Offence: PPPR Regulation 23(a)</p>
<p>Record keeping – Failure of producers, distributors, etc to keep records of products placed on the market/sold for a period of at least 5 years.</p>	<p>Breach: PPPR Regulation 19 Offence: PPPR Regulation 23(a)</p>
<p>Training/certification – using a PPP without a training certificate and not under supervision.</p>	<p>Breach: PPP(SU)R Regulation 8(1) Offence: PPP(SU)R Regulation 24(a)</p>
<p>Training/certification – causing or permitting someone who does not hold a training certificate or is not under supervision to use a PPP.</p>	<p>Breach: PPP(SU)R Regulation 8(2) Offence: PPP(SU)R Regulation 24(a)</p>
<p>Storage - Unapproved products.</p>	<p>Breach: PPP(SU)R Regulation 17(6) Offence: PPP(SU)R Regulation 24(j)</p>
<p>Storage - Inadequate pesticide store.</p>	<p>Breach: PPP(SU)R Regulation 17(5) Offence: PPP(SU)R Regulation 24(j)</p>

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<p>Handling and Storage - Any failure to ensure that all reasonable precautions are taken to protect human health and the environment when storing handling, diluting, mixing, disposing of, cleaning equipment, etc (see Reg 17 for full list).</p>	<p>Breach: PPP(SU)R Regulation 17(1) Offence: PPP(SU)R Regulation 24(j)</p>
<p>Handling and Storage – Failure to comply with Reg 17(3) or 17(4) relating to mixing two or more PPPs.</p>	<p>Breach: PPP(SU)R Regulation 17(3) or 17(4) Offence: PPP(SU)R Regulation 24(j)</p>

### Part 2 – Biocidal products, authorised under BPCR 2013 or which operate under a Certificate of Exemption

Potential offence (this list is not exhaustive)	Breach / Offence
<p>Use - Use of unapproved biocidal products.</p>	<p>Breach: Article 17(1) of EU 528/2012 Offence: HSWA Section 33(1)(c)</p>
<p>Use - Any failure to comply with the conditions of authorisation or specified on the product label in relation to use.</p>	<p>Breach: Article 17(5) of EU 528/2012 Offence: HSWA Section 33(1)(c)</p>

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## Part 3 – Biocide products, authorised under COPR

Potential offence (this list is not exhaustive)	Breach / Offence
Use - Use of unapproved biocidal products.	Breach: COPR Regulation 4(5)(a) Offence: FEPA Section 16(12)(a)
Use - Any failure to comply with the conditions of authorisation or specified on the product label in relation to use.	Breach: COPR Regulation 4(5)(b)(i) Offence: FEPA Section 16(12)(a)
Use - Any failure to ensure that all reasonable precautions are taken to protect human health and the environment.	Breach: COPR Regulation 4(5)(b)(ii) Offence: FEPA Section 16(12)(a)
Training/competence - use by person who is not trained or competent.	Breach: COPR Regulation 4(5)(b)(ii) Offence: FEPA Section 16(12)(a)
Storage - Unapproved products.	Breach: COPR Regulation 4(4)(a) Offence: FEPA Section 16(12)(a)

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### ***Appendix 3 – Protocol for the seizure/disposal of plant protection products or biocidal products***

Schedule 1 of PPPR 2011, Schedule 3 of PPP(SU)R 2012 and regulation 7 of COPR state that under specified circumstances, authorised persons/Ministers may seize or dispose of a plant protection product or COPR approved biocide and, where it is an illegal import, require it to be removed from GB. HSWA powers may be used to seize, dispose or remove biocidal products. It is important that Inspectors use the correct powers depending upon the product(s) involved.

The powers to seize, dispose or remove a pesticide or plant protection product from GB (described above) can be used by HSE inspectors only on a case-by-case basis on specific application to the Executive.

The following procedure for applying for delegation of the powers to seize, dispose of or remove from the UK has been agreed with the HSE Secretariat.

Wherever practicable, the request should be made by a Band 0. It is acknowledged that there may be exceptional circumstances e.g. where time is critical and no Band 0 is available, in which an application from a Band 1 will be considered.

The application should consist of:

- **A Summary** - together with the following statement:  
"This application follows the procedure agreed between the HSE Secretariat and the Agriculture Sector on 9 May 2011."
- **An outline of the law** - including;
  - The requirements of Schedule 1 of PPPR 2011, Schedule 3 of PPP(SU)R 2012 and regulation 7 of COPR as appropriate,
  - Reference to the Agency Agreement,
  - The powers to seize, dispose of or remove from the UK.
- **Details of the case** - setting out the sequence of events leading from the initiating event e.g. investigation of a complaint or the findings at an inspection etc. which caused the inspector concerned to form the opinion that under Schedule 1 of PPPR 2011 or Schedule 3 of PPP(SU)R 2012 "*that a person is committing, has committed or is likely to commit an offence contrary to the regulations.....*" for which seizure or disposal would be an appropriate,

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proportionate and necessary enforcement action. It should include details of any action taken to date e.g. notice(s) served under regulations 9 to 19 PPR 2011 and their aims/objectives together with an indication of any information/evidence the inspector expects to obtain on exercising the delegated powers.

- **Background information** - including details of the client/client business, the previous history of the relationship with HSE and any relevant comments on the offence(s) alleged.
- **Practical Implications** - including any necessary arrangements for the transport, secure storage and (if appropriate) disposal or re-exportation of the products seized together with estimates of the cost to HSE of invoking these arrangements.

Any request for further advice, guidance or help in developing an application should be referred to the Agriculture HELP Team.