



Briefing 8/22

April 2008

# Proposed consolidation and simplification of pesticide legislation in Scotland

To: All Chief Executives, Main Contacts and Email Contacts (Scotland)

Copied for information to: All Chief Executives, Main Contacts (England, Northern Ireland and Wales)

A consultation document by the Scottish Government on potential changes to the stream-lining of pesticide legislation, and its potential impact on local authorities

## Key issues

The briefing sets out the main points of the consultation; including record-keeping, "grandfather rights" and the revocation of superceded legislation.

Of particular interest to those working within Parks and Grounds services will be the proposed removal of "grandfather rights" and changes to record retention.

## 1. Introduction

'Pesticides' (or plant protection products) cover a range of products used for a variety of purposes; as insecticides, plant growth regulators, slug pellets and animal repellents. The consultation from the Scottish Government seeks to gather views on consolidating the existing sets of pesticide regulations that monitor and control the marketing and use of pesticides in Scotland. The legislative proposals, henceforth known as "consolidating regulations" relate to five issues:

- ◆ the consolidation of most of the current legislation for controlling and monitoring the sale, supply, storage, advertisement and use of pesticides into one set of regulations
- ◆ the removal of "Grandfather Rights" exercised by some pesticide spray operators
- ◆ a legal obligation for all professional users of pesticides to keep records of use
- ◆ the revocation of old legislation relating to farm and garden chemicals
- ◆ Granting local authorities the power to seize and destroy illegal pesticide products

The complete consultation questions have been included at the end of the briefing. For further information, please see the following weblink (<http://www.scotland.gov.uk/Publications/2008/02/13103124/2>).

## 2. Consolidation

The existing four sets of regulations provide the framework for the authorisation and marketing of agricultural pesticides in Scotland. These include:

- ◆ the Control of Pesticides Regulations 1986, as amended
- ◆ the Plant Protection Products (Basic Conditions) Regulations 1997
- ◆ the Plant Protection Products (Scotland) Regulations 2005, as amended
- ◆ the Plant Protection Products (Fees) Regulations 2007

Currently there are two parallel systems for controlling pesticides in Scotland; the national system (covering the Control of Pesticides Regulations) and the European system (implemented under the Plant Protection Products Regulations). Consolidating the four sets of regulations is intended to streamline existing legislation, and ultimately assist those working with pesticides through a clear and concise framework.

### **3. Grandfather rights**

The existing regulations provide that no person in the course of a commercial service may use a pesticide approved for agricultural use, unless that person has a certificate of competence. The regulations also enable a person born on or before 31 December 1964 to use pesticides on land that is owned, rented or occupied by them or their employer without such a certificate. This exemption is called "grandfather rights". The rights are only available where the person engages in pesticide spraying activities on land which their employer owns or rents. As a result of the EC Directive 2006/123/EC, there is the risk that the continuation of grandfather rights beyond 28 December 2009 will lead to infraction proceedings against the UK. This is due to the rights being considered contrary to the Directive as a potential barrier to trade by inequality of treatment based on age. The consolidating regulations will look to revoke the rights to ensure compliance with EU legislation.

### **4. Record-keeping**

The proposal will not affect the ordinary householder who buys pesticides for domestic use e.g. a lawn or driveway, the proposal relates to professional users of pesticides. The information that is intended to be gathered is:

- ◆ the date and time of pesticide application
- ◆ the area of land treated, and its location
- ◆ the pesticide used
- ◆ the dose rate
- ◆ the weather conditions at the time

The purpose of the proposal is therefore to level the playing field, requiring all those using pesticides professionally in amenity and industrial situations to keep records for spraying. This is intended to allow for greater accountability and traceability for the public and enforcement officers, and for local authorities to be aware of what pesticides are being used on their behalf by contractors.

### **5. Revocation of old legislation**

The Farm and Garden Chemicals Act 1967 and pertaining Regulations impose legal requirements about the labelling and marking (via the hazard symbol) of some pesticides sold for use in Great Britain. The requirements have subsequently been replicated within UK and EU legislation. The continued existence of the Act and its associated Regulations is an administrative inconvenience for regulated businesses. There will be no change in terms of sale, supply, storage or use of pesticides products in the removal of the Act and Regulations, and therefore no change in the protection given to consumers and the public, contractors and their operators, or farmers and growers.

## 6. Seize and destroy powers

The Food and Environment Protection Act 1985, as amended by the Pesticides Act 1998, provided for Scottish Ministers to seize and dispose of pesticides. This power will now also reside with local authorities.

## 7. Conclusion

The proposed consolidation of plant protection and pesticide legislation is to be welcomed as a tidying-up exercise. The consolidating regulations bring together the four relevant regulations currently in force, and seek to harmonise Scottish legislation with the expected EU Directive on the sustainable use of pesticides, expected later in the year. It is to be hoped that clear, concise guidance will be published following the application of the consolidating regulations, so as all who handle and administer pesticides are clear as to their responsibilities.

The use of grandfather rights in the private and public sector however remains a contentious issue. It was estimated in 2004 that there were between 27,000 and 41,000 operators in total working under grandfather rights (<http://www.pesticides.gov.uk/environment.asp?id=1945>), and the levels of training required for a certificate of competence can be in the range of £750 - £1,000, dependant on the level required. This is a situation in which some local authorities will have to be aware, so that training provision adapts accordingly.

For those working within local authorities, there already exists a legal obligation for all professional users of pesticides to keep records of use. APSE believes that this example of best practice must be made mandatory for all authorities using pesticides. Through the 1986 Control of Pesticides Regulations (the same Control of Pesticides as within the consolidating regulations), it has been required that all plant protection products undergo rigorous testing to avoid unnecessary risks to people and the environment. However it has to be borne in mind that the use of plant protection products is a matter of managed risk, and so accurate information is required in terms of what products are currently being used, but also what products have been used in the past.

There is the intention within the consultation to make it a requirement to keep records for ten years. APSE would go further and suggest a much longer period for retaining records. In the era of Freedom of Information and the associated increased demand for information from the public, it represents best practice to document what pesticides are used, where, and in what quantity. With the conversion to ICT in the last fifteen years, there are no longer the restrictions of physical space and material cost in retaining records. The suggestion of keeping records for ten years seems too short, and an extended retention period can demonstrate local authorities taking the lead on the issue of protecting the public and the environment.

The revoking of superceded legislation is consistent with the UK government's better regulation agenda, and so reduces unnecessary replication within Scottish legislation.

Finally, the granting of powers to local authorities to seize and destroy illegal pesticides is to be welcomed. Though illegal pesticides are rare, it has been identified as a growing problem (Crops 8 March 2008), and so providing for local authorities could be of use.

APSE will be responding to this consultation on behalf of the membership, if you have any comments you wish to add, please contact myself on [afildes@apse.org.uk](mailto:afildes@apse.org.uk). Responses are due by 8 May 2008, the consultation questions can be found below.

**Alistair Fildes**  
**Research and Advisory Officer**

## **8. Consultation questions**

### **Consolidation**

Do you have any comments on the proposal to consolidate the four sets of pesticides regulations?

### **Grandfather rights**

Do you have any comments on the removal of grandfather rights by 28 December 2009?

### **Record-keeping**

What do you think about record-keeping compulsory for all professional users of pesticides?

Do you have any comments on the basic information which we think should be recorded?

Do you have any comments on the 10 year retention period which we propose for keeping the records?

Do you have any information on the costs of record-keeping that you could give us? (comments from local authorities would be particularly appreciated)

If you haven't kept records so far, what arrangements will you have to make to enable you to do so, and how much do you think this will cost you?

Do you agree that there should be no need for specialized equipment for keeping records?

Do you have any opinion, positive or negative, on what effect record-keeping will have on your business?

### **Revocation of old legislation**

Farm and Garden Chemicals Act 1967 is to be removed from the statute book, do you have any comments about their removal?

The Control of Pesticides Regulations 1986 predated the Freedom of Information legislation, providing for the release of information to the public. An equivalent provision is considered no longer necessary, as the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 are now in force and provide for access to all the information on pesticides held by the Scottish Government. Have you any comment to make on this?