



# Food and Environment Protection Act 1985

## 1985 CHAPTER 48

### PART III

#### PESTICIDES ETC.

#### 16 Control of pesticides etc.

- (1) The provisions of this Part of this Act shall have effect—
- (a) with a view to the continuous development of means—
    - (i) to protect the health of human beings, creatures and plants;
    - (ii) to safeguard the environment; and
    - (iii) to secure safe, efficient and humane methods of controlling pests; and
  - (b) with a view to making information about pesticides available to the public;
- and references in this Part of this Act to the general purposes of this Part of this Act are references to the purposes mentioned in this subsection.
- (2) The Ministers may jointly by regulations—
- (a) impose the specified prohibitions in relation to pesticides but exclude from them pesticides of a description specified in the regulations;
  - (b) provide that the Ministers may jointly give their approval, in relation to pesticides of a description specified in the regulations, to the doing of anything that would otherwise be prohibited by virtue of paragraph (a) above;
  - (c) provide for the imposition of conditions on an approval, when or after it is given;
  - (d) provide for the giving of consent by the Ministers or either of them to the doing of anything contrary to a specified prohibition;
  - (e) provide that a consent given by virtue of paragraph (d) above may be given either without conditions or subject to such conditions as may be specified;
  - (f) provide—
    - (i) for the review, revocation or suspension of an approval;

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- (ii) for the amendment of conditions imposed on an approval;
- (g) direct that, if there has been a breach, in relation to any pesticide,—
  - (i) of any of the specified prohibitions; or
  - (ii) of a condition imposed by virtue of this subsection,
 either of the Ministers shall have power—
  - (iii) to seize or dispose of it or to require that some other person shall dispose of it;
  - (iv) to seize or dispose of anything treated with it or to require that some other person shall dispose of any such thing;
  - (v) to direct some other person to take such remedial action as appears to the Minister to be necessary as a result of the contravention;
- (h) provide that, if any pesticide has been imported into the United Kingdom in contravention of any of the specified prohibitions or of any such condition, either of the Ministers may require that it shall be removed out of the United Kingdom;
- (j) provide for the availability to the public, subject to any condition that the Ministers consider appropriate, and to payment of such reasonable fees for furnishing copies as the Ministers may with the consent of the Treasury determine, of information supplied for the purposes of this section;
- (k) specify how much pesticide or pesticide residue may be left in any crop, food or feeding stuff; and
- (l) direct that, if there is more pesticide or pesticide residue in any crop, food or feeding stuff than the proportion specified by virtue of paragraph (k) above, either of the Ministers shall have power—
  - (i) to seize or dispose of the crop, food or feeding stuff in question or to require that some other person shall dispose of it;
  - (ii) to direct some other person to take such remedial action as appears to the Minister to be necessary as a result of the contravention,

and in this Part of this Act “regulations” means regulations under this section and “approval” means approval under regulations.

- (3) In this Part of this Act “the specified prohibitions”, in relation to pesticides, means prohibitions of any of the following—
  - (a) importation;
  - (b) sale, offer or exposure for sale or possession for the purpose of sale;
  - (c) supply or offer to supply;
  - (d) storage;
  - (e) use;
  - (f) advertisement.
- (4) Pesticides may be identified in any way for the purposes of this Part of this Act.
- (5) In determining any provision to be made by virtue of subsection (2)(j) above the Ministers shall have regard to the interests of persons supplying information to which that provision would relate.
- (6) Regulations shall be made by statutory instrument and no regulations shall be made unless a draft of them has been laid before and approved by resolution of each House of Parliament.

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- (7) The Ministers may by order made by statutory instrument jointly establish a committee to give them advice, either when requested to do so or otherwise, on any matters relating to the control of pests in furthering the general purposes of this Part of this Act, and Schedule 5 shall have effect with respect to it.
- (8) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) The Ministers shall consult the committee—
- (a) as to regulations which they contemplate making;
  - (b) as to approvals which they contemplate giving, revoking or suspending; and
  - (c) as to conditions to which they contemplate making approvals subject.
- (10) If it appears to the Ministers that regulations which they contemplate making are likely to affect the health or safety of persons at work, it shall be their duty to consult the Health and Safety Commission concerning them.
- (11) Either of the Ministers may require the provision of such information by importers, exporters, manufacturers, distributors or users of a pesticide as he considers to be necessary—
- (a) for the purpose of controlling pesticides in the United Kingdom; or
  - (b) for the fulfilment by the government of the United Kingdom of any international obligation to supply information; or
  - (c) to enable the government of the United Kingdom to determine what action it should take in order to fulfil an international obligation of any other description.
- (12) A person who—
- (a) without reasonable excuse, contravenes, or causes or permits any other person to contravene—
    - (i) any provision of regulations;
    - (ii) any condition of approval of a pesticide; or
    - (iii) any requirement imposed by virtue of regulations or of subsection (11) above; or
  - (b) in purporting to give information required by virtue of subsection (11) above—
    - (i) makes a statement which he knows to be false in a material particular;
    - (ii) recklessly makes a statement which is false in a material particular; or
    - (iii) intentionally fails to disclose any material particular,shall be guilty of an offence.
- (13) In subsection (12) above “contravenes” includes “fails to comply with” and “contravene” has a corresponding meaning.
- [<sup>F1</sup>(13A) If either of the Ministers does anything by virtue of this Part of this Act in consequence of a failure on the part of any person to comply with regulations, he may recover from that person expenses reasonably incurred by him in doing it.]
- (14) It shall be a defence in proceedings for an offence—
- (a) under section 8(b) of the <sup>M1</sup>Protection of Animals Act 1911;
  - (b) under section 7(b) of the <sup>M2</sup>Protection of Animals (Scotland) Act 1912; or

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(c) under section 22(2)(b) of the <sup>M3</sup>Welfare of Animals Act (Northern Ireland) 1972,

(each of which restricts the placing on land of poison and poisonous substances) for the person charged to show that he acted in accordance with an approval.

(15) In this Act—

“pest” means—

- (a) any organism harmful to plants or to wood or other plant products;
- (b) any undesired plant; and
- (c) any harmful creature;

“pesticide” means any substance, preparation or organism prepared or used for destroying any pest; and

“pesticide residue” means any substance resulting from the use of a pesticide including, without prejudice to the generality of this definition, any such derivative as regulations may specify in relation to a particular pesticide.

(16) This Part of this Act applies to any substance, preparation or organism prepared or used for any of the following purposes—

- (a) protecting plants or wood or other plant products from harmful organisms;
- (b) regulating the growth of plants;
- (c) giving protection against harmful creatures;
- (d) rendering such creatures harmless;
- (e) controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products;
- (f) protecting animals against ectoparasites,

as if it were a pesticide.

#### Textual Amendments

**F1** S. 16(13A) inserted by Pesticides (Fees and Enforcement) Act 1989 (c. 27, SIF 46:4), s. 1(2)

#### Marginal Citations

**M1** 1911 c. 27.

**M2** 1912 c. 14.

**M3** 1972 c. 7. (N.I.).

## 17 Codes of practice.

(1) The Ministers may from time to time after consultation with such persons or bodies as seem to them representative of the interests concerned—

- (a) prepare and issue codes of practice for the purpose of providing practical guidance in respect of any provision of this Part of this Act or of regulations; and
- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.

(2) A code prepared in pursuance of this section and any alterations proposed to be made on a revision of such a code shall be laid before both Houses of Parliament, and the Ministers shall not issue the code or revised code, as the case may be, until after the

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end of the period of 40 days beginning with the day on which the code or the proposed alterations were so laid.

- (3) If, within the period mentioned in subsection (2) above, either House resolves that the code be not issued, or the proposed alterations be not made, as the case may be, the Ministers shall not issue the code or revised code (without prejudice to their powers under that subsection to lay further codes or proposed alterations before Parliament).
- (4) For the purposes of subsection (2) above—
  - (a) where a code or proposed alterations are laid before each House of Parliament on different days, the later day shall be taken to be the day on which the code or the proposed alterations, as the case may be, were laid before both Houses; and
  - (b) in reckoning any period of 40 days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) The Ministers shall cause any code issued or revised under this section to be printed and distributed, and may make such arrangements as they think fit for its distribution, including causing copies of it to be put on sale to the public at such reasonable price as the Ministers may determine.
- (6) A failure on the part of any person to follow any guidance contained in a code issued under this section shall not of itself render that person liable to proceedings of any kind.
- (7) In all criminal proceedings any such code shall be admissible in evidence; and if any provision of such a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

#### **[F<sup>2</sup>18] Payments for general purposes of Part III.**

- (1) Either of the Ministers may require an applicant for the approval of a pesticide under this Part of this Act, on making his application, to pay a fee as a contribution to the cost of handling and evaluating it.
- (2) Either of the Ministers may require payments by such persons as he considers appropriate in respect—
  - (a) of the balance of the cost of handling and evaluating applications for approval;
  - (b) of the collection of information under section 16(11) above and the processing of information supplied under that subsection; and
  - (c) of monitoring the effect of the use of pesticides in the United Kingdom.
- (3) Amounts to be paid under this section shall be determined on principles settled by the Ministers with the consent of the Treasury and after consultation with organisations appearing to the Ministers to represent persons who are likely to apply for approvals.
- (4) Without prejudice to the generality of subsection (3) above, the Ministers may settle that any such amount is to be calculated by reference to either or both of the following—
  - (a) the United Kingdom turnover during a specified period of a pesticide to which an approval relates; or

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- (b) the United Kingdom turnover during a specified period of all pesticides to which approvals held by the person who is to make the payment relate.
- (5) Any such amount may be calculated in such manner as the Minister to whom it is to be paid considers reasonable—
  - (a) if insufficient evidence of turnover is submitted for the calculations that would be required under subsection (4) above; or
  - (b) if no evidence is submitted for those calculations.
- (6) Either of the Ministers may permit payment by instalments, and arrange for the refund, adjustment, set-off, waiver or reduction of the whole or part of a payment, in such cases as he may determine.
- (7) If an amount payable by any person in respect of an approval is unpaid, the Ministers may suspend the approval, until that amount is paid, to such extent as they consider appropriate and, without prejudice to the generality of this subsection, to the extent that it authorises him to sell the pesticide.
- (8) All payments under this section are payments for the general purposes of this Part of this Act and may be used accordingly.]

#### Textual Amendments

**F2** S. 18 substituted by [Pesticides \(Fees and Enforcement\) Act 1989 \(c. 27, SIF 46:4\)](#), **s. 1(1)**

#### Modifications etc. (not altering text)

**C1** S. 18 modified (1.1.2002) by [S.I. 2001/3898](#), **reg. 2**

## 19 Enforcement powers.

- [<sup>F3</sup>(1) Subject to the following provisions of this section, the powers conferred by this section (including Schedule 2 to this Act) (“the enforcement powers”) may be exercised—
- (a) by a person whom either of the Ministers has by instrument in writing authorised to exercise them; or
  - (b) by an officer of a local authority who is authorised to exercise them under subsection (1C) below.
- (1A) An instrument issued under subsection (1)(a) above may provide that the person to whom it is issued may only exercise the enforcement powers for specified purposes.
- (1B) Either of the Ministers may specify descriptions of local authority officers who may be authorised to exercise the enforcement powers but may direct that an officer of a particular description may only be authorised to exercise them for specified purposes.
- (1C) If either of the Ministers specifies a description of local authority officers under subsection (1B) above, a local authority may by instrument in writing authorise any of its officers falling within that description to exercise the enforcement powers.
- (1D) The following provisions of this Act are to be construed in reference to a person authorised to exercise the enforcement powers as subject to the terms of the instrument which authorises him to exercise them.]
- (2) Subject to the following provisions of this Act, a person so authorised may enter any land if he has reasonable grounds to believe—

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- (a) that any pesticide is being or has been applied to or stored on it; and
  - (b) that it is necessary for him to enter for any of the general purposes of this Part of this Act.
- (3) A person so authorised may enter any vehicle, vessel, aircraft, hovercraft or marine structure if he has reasonable grounds to believe—
- (a) that any pesticide is being or has been stored in, transported on or applied by means of it; and
  - (b) that it is necessary for him to do so for any of the general purposes of this Part of this Act.
- (4) For any of those purposes, a person so authorised may require any person to give him information as to the formulation, effects or use of any substance.
- (5) If a person so authorised is of the opinion that a person—
- (a) is committing an offence under section 16(12)(a) above; or
  - (b) has committed such an offence in circumstances that make it likely that the offence will be repeated,
- he may serve on that person a notice stating that he is of that opinion, specifying the offence as to which he is of that opinion, giving particulars of the reasons why he is of that opinion and directing—
- (i) that any land, vehicle, vessel, aircraft, hovercraft or marine structure on or in which it appears to him that the offence was or is being committed or anything which is on or in it, shall be left undisturbed (whether generally or in particular respects) for so long as it appears to him to be reasonably necessary; or
  - (ii) that any reasonable remedial or preventive measures shall be taken.
- (6) If a person so authorised is of the opinion that any activities, as carried on or about to be carried on by or under the control of any person, involve or, as the case may be, will involve a risk of the commission of an offence under section 16(12)(a) above, he may serve on that person a notice—
- (a) stating that he is of that opinion;
  - (b) specifying the matters which in his opinion give or, as the case may be, will give rise to the said risk; and
  - (c) directing that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) above have been remedied.
- (7) Schedule 2 to this Act shall have effect with respect to persons authorised to enforce this Part of this Act.
- [<sup>F4</sup>(8) In this section “local authority” means—
- (a) any local authority, as defined in the Local Government Act <sup>M4</sup>1972, except a parish or community council;
  - (b) any local authority, as defined in the Local Government (Scotland) Act <sup>M5</sup>1973;
  - (c) a district council in Northern Ireland; and
  - (d) a port health authority.]

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#### **Textual Amendments**

- F3** S. 19(1)(1A)-(1D) substituted for s.19(1) by [Pesticides \(Fees and Enforcement\) Act 1989 \(c. 27, SIF 46:4\)](#), [s. 2\(1\)\(3\)](#)
- F4** S. 19(8) added by [Pesticides \(Fees and Enforcement\) Act 1989 \(c. 27, SIF 46:4\)](#), [s. 2\(2\)\(3\)](#)

#### **Modifications etc. (not altering text)**

- C2** S. 19 applied (with modifications) (E.W.S.) (17.4.1995) by [S.I. 1995/887](#), [reg. 24\(1\)](#)
- C3** S. 19(5)(6) applied (17.6.1994) by [S.I. 1993/3159](#), [art. 2\(2\)\(4\)](#), [Sch.1](#)

#### **Marginal Citations**

- M4** [1972 c. 70\(81:1\)](#).
- M5** [1973 c. 65\(81:2\)](#).



**Status:**

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