

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Wildlife etc.

Pesticides harmful to wildlife

Section 43: Possession of pesticides harmful to wildlife

116. The Secretary of State may, by negative resolution order, prescribe those ingredients of pesticides that she believes could cause harm to wild birds and/or animals. An order under section 43 could be made in relation to several pesticide ingredients that have been linked with poisoned bait and that are known to be very dangerous to animals, in particular to birds of prey. It will be an offence to possess a pesticide containing a prescribed ingredient unless it can be shown that possession was for lawful use in accordance with relevant pesticide, biocide or poisons legislation.
117. Existing legislation in Part 1 of the Wildlife and Countryside Act 1981 already provides for an offence where it can be shown that a person has set or used a poisoned bait (sections 5(1)(a) and (b) and 11(2)(a) and (b)). However, in practice, it has been difficult to prove that the person set or used the bait, and so under the new section 43 offence it will not be necessary to show this.
118. A similar offence to that set out in section 43 has been introduced in Scotland by the Nature Conservation (Scotland) Act 2004.
119. The offence in section 43 is not inserted in the 1981 Act partly for reasons connected with enforcement powers. Section 43 needs to be read with section 44, which confers enforcement powers in connection with the new offence, including certain powers contained in Schedule 2 to the Food and Environment Protection Act 1985 (FEPA) that are available in connection with other provisions regulating pesticides.

Section 44: Enforcement powers in connection with pesticides

120. The inspectors on whom the enforcement powers under this section are conferred will be authorised by the Secretary of State (in England) or the National Assembly for Wales (in Wales).
121. Under *subsection (1)* inspectors may enter premises to check if persons have a pesticide containing a prescribed ingredient in storage without any lawful use for it if they have reasonable grounds to suspect that they may find evidence of an offence. This power could be used where there have been reports of poisoning wild birds or animals in a neighbourhood and an inspector wishes to check for possession of such pesticides in that neighbourhood. The inspector can require the disclosure of information under (1) (b) about any substance that he finds.

122. *Subsection (4)* applies most of the enforcement provisions of Schedule 2 to FEPA to the enforcement of the offence in section 43. This is particularly significant in connection with the power of entry conferred by subsection (1)(a) of section 44. Under paragraph 7 of Schedule 2 to FEPA, an inspector may enter a dwelling only if a justice of the peace has issued a warrant authorising him to do so. Such warrant will only be issued in certain prescribed circumstances as listed in that Schedule (for instance, where it is not possible to communicate with any person entitled to grant entry to the dwelling).
123. Authorised inspectors using enforcement powers under paragraph 2 of Schedule 2 to FEPA may bring with them other persons and any equipment or materials to assist them in performing their functions. They must only operate at reasonable hours. Additionally they will be able to use reasonable force to perform their functions (for example in opening containers). They can photograph evidence. Related offences are provided for under paragraph 10 of the FEPA Schedule. These include supplying false information to an inspector and obstructing an inspector who is performing his duties.
124. By virtue of *subsection (1)(c)* an inspector can seize any substance that he has reasonable grounds to believe to be a pesticide containing a prescribed ingredient. This power could be used to take a sample for analysis, or to take the whole of the substance away.
125. *Subsections (5) to (8)* provide safeguards in connection with seizure and a procedure for recovery of the seized substance if proceedings are not brought or after the completion of any criminal proceedings.

Section 45 Codes of Practice

126. The Secretary of State may issue a code that details how the authorised pesticide inspector will conduct himself before, during and after he has entered premises under the powers given by section 44. The inspector must have regard to such code and it will be admissible in evidence in any proceedings where it can be taken into account by a court.

Section 46: Interpretation

127. *Subsection (2)* defines “pesticide”. The term can include substances, preparations or organisms prepared or used for destroying any pests.
128. *Subsection (3)* defines “wild bird” and “wild animal”. Under the Wildlife and Countryside Act 1981 “wild bird” means any bird of a species that is ordinarily resident in or is a visitor to the European territory of any member state in a wild state, but does not include poultry, or game birds (other than in a few specified circumstances). “Wild animal” under the 1981 Act means any animal (other than a bird) which is or (before it was taken) was living wild.
129. It is necessary to be able to inspect not only land and buildings but also vehicles, vessels and so on, and therefore in *subsection (4)* “premises” is given an extended meaning. It is not uncommon in legislation for the meaning of “premises” to be extended in this way.