EXPLANATORY MEMORANDUM TO

THE PLANT PROTECTION PRODUCTS (FEES) REGULATIONS 2007

2007/ 295

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

This Statutory Instrument establishes fees to cover the cost of applications for pesticide approvals.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

This SI establishes a charging structure to cover the cost of applications for pesticide approvals. The costs of regulatory work are recovered from industry through a statutory charging system. The system is based in UK statute (the Food and Environment Protection Act 1985 – FEPA as amended by the Pesticides Fees and Enforcement Act 1989 and the Control of Pesticides Regulations 1986 COPR) and EC law (Council Directive 91/414/EEC), implemented in the UK by the Plant Protection Products Regulations (PPPR) 1995.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

A pesticide may only be marketed and used in the UK if Ministers have given approval for this. Applications for approval are considered on the basis of detailed scientific evaluation of safety data.

The costs of regulatory work are recovered from industry through a statutory charging system. These charges consist of application fees and an annual levy on UK pesticide sales.

It is a longstanding government policy that the full costs of the pesticides regime should be recovered from the industry. Fee rates are reviewed annually in the light of the actual costs of the work undertaken. A current review highlighted a change in costs and the need to make changes to the existing fees, including the introduction of some new fees and the consolidation of a number of existing fees.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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REGULATORY IMPACT ASSESSMENT

REVIEW OF CHARGING STRUCTURE FOR PESTICIDES

Purpose and intended effect

Objective

1. To seek the Ministers agreement on proposals for reviewing the existing fees and charges structure designed to recover the costs of the pesticides regulatory regime from the crop protection industry.

Background

2. A pesticide may only be marketed and used in the UK if Ministers have given approval for this. Applications for approval are considered on the basis of detailed scientific evaluation of safety data. The system is based in UK statute (the Food and Environment Protection Act 1985 – FEPA as amended by the Pesticides Fees and Enforcement Act 1989 and the Control of Pesticides Regulations 1986 COPR) and EC law (Council Directive 91/414/EEC), implemented in the UK by the Plant Protection Products Regulations (PPPR) 1995.

3. The costs of regulatory work are recovered from industry through a statutory charging system run under FEPA/COPR and PPPR. These charges consist of application fees and an annual levy on UK pesticide sales. The levy under both FEPA/COPR and PPPR are not directly affected by these proposals although under FEPA/COPR any increase in fees would reduce the charge to the levy thereby proving cost neutral to the industry as a whole.

4. The existing fee structure applies a modular approach to product applications processed via the Approvals Secretariat procedure. The proposal is to introduce the same approach to active substance evaluations processed via the Approvals Committee procedure thereby improving consistency and simplifying the application regime.

5. Fee rates are reviewed annually in light of the actual costs of the work undertaken. A current review highlighted the need to make changes to the existing fees, including the introduction of some new fees and the consolidation of a number of existing fees. Equality, consistency and simplification are at the forefront of the proposed changes.

Rationale for government intervention

6. All current and future pesticide approval holders are likely to be affected by the changes either directly or indirectly. The proposed removal of the subsidy for specific off-labels approvals (SOLAs) and the effect on the Horticultural

Development Council, small firms and individual growers will have the most significant impact.

7. The approval of new products and the ‘re-registration’ of older products is essential to ensure that all products on the UK market meet modern standards of human and environmental safety. Unless a revised fees and charges structure is put in place there is a real risk that the Pesticides Safety Directorate will not fully recover its costs. There is also a risk that entities other than those who benefit directly from the service will become liable for an increasing proportion of the cost of applications.

Consultation

8. A full 12 week consultation of all PSD’s stakeholders has been undertaken. Stakeholders included all approval holders, industry fees and charges representatives and growers groups. Other interested parties including the devolved administrations and Better Regulation Unit were also consulted.

9. Other than in respect to SOLAs, there were no objections or significant comments resulting from the consultation.

10. The Consultation provoked a strong reaction from growers. Of the 55 responses received, 51 opposed the proposed increase in the charge for SOLAs (1 respondent supported the removal of the subsidy). Opposition centred around the increased financial burden this would place on the levy-funded grower organisations and particularly the Horticultural Development Council (a summary of responses can be seen at Annex D). It was argued that this would divert funds away from important R & D and ultimately reduce the number of products available. This in turn would adversely affect the competitiveness of UK producers.

11. The consultation was undertaken in compliance with the Cabinet Office code of practice.

Options

<u>Option 1</u>

12. Do nothing – without a new charging structure PSD will not achieve full cost recovery in respect of the costs of handling applications for pesticide approvals. The Government would need to meet this shortfall through the subsidisation of application fees.

Option 2

13. Apply full cost recovery principles to all fees, including SOLAs. This would gain full cost recovery but would create difficulties for the Horticultural Development Council and growers who could face a significant increase in costs.

Option 3

14. Introduce the fees as proposed including an incremental increase for SOLAs over a period of 6 years resulting in the gradual removal of the current SOLA subsidy and a phased move towards full cost recovery. Where respondents to the consultation stated a preference this was the preferred option.

Costs and Benefits

15. As there was only opposition to the proposed increase in the SOLA fee, the cost benefit consideration of the individual options deals with the SOLA issue separately.

Sectors and groups affected

16. Any business that submits a pesticide approval application will potentially be affected by the proposed charging structure.

17. The Horticultural Development Council applies for SOLAs on behalf of its members and consequently it will be adversely affected as a result of any increase in the SOLA fee. In particular its R & D capability will be reduced.

18. Any reduction in R & D is likely to hit growers. The horticultural industry is a relatively technologically driven one, and the R&D funded by the HDC coveres a wide range of innovations on environmental sustainability, varietal development, technology application, water and energy use etc.. A reduction in the level of this work would ultimately damage UK growers' competitiveness.

19. Conversely current FEPA/COPR approval holders will benefit if the current SOLA subsidy is removed as this will reduce the costs recovered via the levy.

Costs and Benefits – Option 1

20. **Table 1 - The annual costs of option 1 (excluding SOLAs).**

Table1	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
Approvals Secretariat	NIL	NIL	NIL	56
Approvals Committee	NIL	NIL	NIL	373
Total	NIL	NIL	NIL	429

21. Under this option fees remain unchanged and a relatively large under recovery remains. If full cost recovery is to be achieved this shortfall may need to be funded by Government through the subsidisation of fees.

22. **Table 2 - The annual costs of option 1 relating to SOLAs (based on current demand).**

Table 2	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLAs (current demand)	NIL	NIL	NIL	46

23. The full extent of the shortfall is £92k with 46k of this being recovered via the FEPA/COPR levy. However new SOLAs are approved under PPPR and this subsidy via the levy will no longer be allowable. The shortfall may therefore need to be funded by Government through the subsidisation of fees.

24. **Table 3 - The costs of option 1 relating to SOLA re-registration (over a 6 year period).**

Table 3	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLA Re-registration	NIL	NIL	NIL	2,014

25. For illustrative purposes the above shortfall assumes that all current SOLAs will be re-registered (in reality this is unlikely to be the case). The shortfall of £2.014m is over a six year period and equates to £335k annually (assuming an even spread of re-registrations over time). If full cost recovery is to be achieved this shortfall may need to be funded by Government through the subsidisation of fees.

Costs and Benefits – Option 2

26. **Table 4 - The annual costs of option 2 (excluding SOLAs).**

Table 4	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
Approvals Secretariat	112	(56)	56	NIL
Approvals Committee	373	NIL	373	NIL
Total	485	(56)	429	NIL

27. This option charges the full cost of applications to the entity directly receiving the service and removes any cross subsidy from the levy. The total increase in income is £429k with an increase in fees of £485k being offset by a £56k reduction in the levy.

28. **Table 5 - The annual costs of option 2 relating to SOLAs (based on current demand).**

Table 5	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLAs (current demand)	92	(46)	46	NIL

29. The additional financial burden on the horticultural industry if the full cost of SOLAs is charged would be approximately £92k (based on 75 applications and an increase in fee from £470 to £1,700). At the same time the Levy on products approved under FEPA/COPR would reduce by around £46k. The actual increase in income would therefore be £46k.

30. **Table 6 - The costs of option 2 relating to SOLA re-registration (over a 6 year period).**

Table 6	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLA Re-registration	2,014	NIL	2,014	NIL

31. For illustrative purposes the above increase in fee income assumes that all current SOLAs will be re-registered (in reality this is unlikely to be the case). The additional financial burden as a result of the increase is £2.014m over a six year period and equates to £335k annually (assuming an even spread of re-registrations over time). This additional charge is likely to be wholly incurred by the Horticultural Development Council.

Costs and Benefits – Option 3

32. **Table 7 - The annual costs of option 3 (excluding SOLAs).**

Table 7	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
Approvals Secretariat	112	(56)	56	NIL
Approvals Committee	373	NIL	373	NIL
Total	485	(56)	429	NIL

33. For non SOLA applications this option is identical to Option 2. It charges the full cost of applications to the entity directly receiving the service and removes any cross subsidy via the levy.

34. **Table 8 - The annual costs of option 3 relating to SOLAs (based on current demand).**

Table 8	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLAs (current demand)	16	(8)	8	38

35. The additional financial burden if the phased SOLA fee is charged would be approximately £16k per annum (based on 75 applications and an increase in fee of £205 per year for 6 years). This approach would gradually erode the shortfall until full cost recovery is achieved in 2012.

36. **Table 9 - The costs of option 3 relating to SOLA re-registration (over a 6 year period).**

Table 9	Increase in Fee Income £000's	Decrease in Levy Income £000's	Total Increase in Income £000's	Full cost recovery shortfall £000's
SOLA Re-registration	1,175	NIL	1,175	839

37. For illustrative purposes the above increase in fee income assumes that all current SOLAs will be re-registered (in reality this is unlikely to be the case). It also assumes that re-registration will be evenly spread across the 6 year period.

38. The additional financial burden faced by the HDC as a result of the phased increase is £1.175m over a six year period (£196k per year).

39. The full cost recovery shortfall resulting from the phased fee approach is £839k over the same 6 year period (£140k per year).

40. If the re-registrations are not evenly spread this will impact on the figures as presented. Early applications will increase the shortfall whilst later applications will reduce it. The opposite is true of the financial burden faced by HDC.

Small Firms Impact Test

41. A Small Firms Impact Test has been undertaken and this shows the SOLA issue as the area likely to have the largest impact on the smaller firm.

42. The Horticultural Development Council (HDC) meets the costs of most SOLA applications. It is therefore the HDC who will have to carry the burden of any increase in fees. It would be possible for it to increase its levy rates to cover these costs, though these are limited by statute and any proposed change in levy is required to be consulted on across the industry, and then to receive ministerial approval.

43. Small firms could face cost increases if the levy rate were increased or there was a reduction in the number of products available which could impact on their competitiveness, particularly with producers from elsewhere in the EC.

44. However it seems more likely that HDC will seek to maintain a reasonable level of product availability by securing SOLAs and absorb any cost increases. The £2.8m which would be required for re-registration over six years would reduce the funding available for R&D, again potentially impacting on industry competitiveness.

Competition assessment

45. The UK pesticide market is dominated by large multinational companies however there are also small and medium sized companies successfully competing in the marketplace. The proposals being put forward are not expected to change the market structure or affect the number or size of the firms operating.

46. The proposed charging structure is the same for all applicants and should not affect new or potential firms more than existing companies.

47. The increased fees could affect low turnover firms and those operating in the niche products market. Respondents to the consultation argued that the impact of the increase in SOLA fees would ultimately reduce the number of products available and damage UK producer’s competitiveness.

Enforcement, sanctions and monitoring

48. Fees are payable in advance therefore work will not generally commence until they are received.

49. Where fees and levy charges are not paid, new products will not be allowed onto the market and existing products will be removed.

50. The burden of forms will be kept to a minimum. The use of e-business will be promoted and in the case of the sift; it is encouraged through a lower fee. Levy declarations will be available electronically and the production of an auditor's certification with turnover declarations will be requested on a 5 year rolling basis to reduce both the administrative and financial burden.

Implementation & Delivery Plan

51. Implementation will be via a comprehensive Pesticides Fees Statutory Instrument covering all Fees and Charges.

Post-implementation review

52. Costs of processing all applications will be reviewed on at least an annual basis.

Summary & Recommendation

53. **Table 10 below summarises the position for each of the options excluding SOLAs.**

Table 10	**OPTION 1 £000s**	**OPTION 2 £000s**	**OPTION 3 £000s**
Additional Fee Income	NIL	485	485
Net charge to Industry	NIL	429	429
Cost recovery shortfall	429	NIL	NIL

54. **Table 11 below summarises the position for each of the options in relation to SOLAs (based on current demand).**

Table 11	**OPTION 1 £000s**	**OPTION 2 £000s**	**OPTION 3 £000s**
Additional fee income	NIL	92	16
Reduction in the industry levy	NIL	46	8
Shortfall	46	NIL	38

55. **Table 12 below summarises the position for each of the options in relation to SOLA re-registrations over a 6 year period**

Table 12	**OPTION 1 £000s**	**OPTION 2 £000s**	**OPTION 3 £000s**
Additional fee income	NIL	2,014	1,175
Shortfall	2,014	NIL	839

56. Option 1 – rejected

57. This option results in large shortfalls against the full cost recovery target and if there is no increase in fees the shortfall would need to be met by Government through the subsidisation of fees. However there is an industry expectation that fees would need to be increased (there have been no increases since 1 April 2003) and with the exception of SOLAs no opposition was received as a result of the consultation. For legal reasons we have no choice but to end the current SOLA subsidy from the pesticides levy. The SOLA issue is considered further in options 2 & 3.

58. Option 2 – rejected

59. This option removes the shortfall altogether but it places a large financial burden on the Horticultural sector and in particular the Horticultural Development Council (HDC). Consultation responses argued that if the HDC had to meet these additional costs it would probably divert funds away from R & D. This could impact on the competitiveness of UK growers.

60.Option 3 – recommended

61. Like option 2 this option removes the shortfall completely for non SOLA applications. It also takes account of the consultation objections to the proposed increase cost of SOLAs. A phased increase over a 6 year period is recommended (this could be extended further if there is any slippage in the EC Review Programme). This should ease the burden faced by the HDC and gradually remove the current subsidy (full cost recovery is expected by 2012).

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed Jeff Rooker

Date: 22nd January 2007

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