

EXPLANATORY MEMORANDUM TO

THE PESTICIDES (MAXIMUM RESIDUE LEVELS IN CROPS, FOOD AND FEEDING STUFFS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2007

2007 No. 971

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

2.1 This Statutory Instrument adds new maximum residue levels (MRLs) and revises others, and sets new residue definitions for a number of different pesticides in a wide range of foodstuffs.

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

3.1 The House of Lords Committee on the Merits of Statutory instruments has made clear its preference for instruments to be revoked and re-made rather than amended.

3.2 The Committee will, therefore, wish to know why the Department has amended the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 2005 (S.I. 2005/3286) rather than consolidate them.

3.3 The latest amendments to the 2005 Regulations are necessary to replace maximum residue levels which are set down by Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC. These Directives are amended on a regular basis and frequent rapid changes to the domestic legislation are required. For instance, Directive 2006/92/EC needs to be transposed by 10 May 2007, which does not allow enough time for consolidation.

3.4 In addition, the current system of transposing Commission Directives by Statutory Instrument will end when EC Regulation 396/2005 comes fully into force in the near future. EC Regulation 396/2005 will provide for a fully integrated EC MRLs regime, avoiding the need for member States to transpose via National legislation. Although the framework regulation is in place, work on the first four Annexes to Regulation 396/2005 must be completed before it comes fully into force. On current estimates this work will be concluded in time for the Regulation to come into force early in 2008. Given that the new Regulation is imminent, there is little to be gained from further consolidation at this stage.

3.5 Members of the public are most likely to need to use Schedule 2 to the 2005 Regulations. A consolidated version of this Schedule and Schedule 1 (which lists for each pesticide the specific compound(s) which comprise(s) the pesticide residue) are posted by the Pesticides Safety Directorate (an Executive Agency of the Department) in an easy to read format, on its website.

4. Legislative Background

4.1 This Instrument transposes two EC Directives (2006/62/EC and 2006/92/EC) developed as part of an on-going Community program to establish MRLs for all pesticides in a wide range of foodstuffs.

4.2 This instrument transposes these Directives by amending the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 2005. These Regulations establish a legislative framework, enabling MRLs to be set, monitored and enforced.

4.3 A transposition note is attached.

4.4 This Instrument transposes Commission Directives which are not subject to Parliamentary Scrutiny. The Directives do, however, amend four similar Council Directives 76/895/EEC (for fruit and vegetables), 86/362/EEC (fixing MRLs for cereals), 86/363/EEC (fixing MRLs for foodstuffs of animal origin) and 90/642/EEC (fixing MRLs for fruit and vegetables and other foodstuffs of plant origin).

5. Extent

5.1 This Instrument applies to England and Wales only. Similar legislation is being prepared by the Scottish Executive, Environment and Rural Affairs Department, and the Department of Agriculture and Rural Development, Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 MRLs reflect levels of pesticides that are expected to be found in produce that has been treated in accordance with good agricultural practice. Thus, they provide a mechanism for statutory controls on pesticides in produce moving in trade and for monitoring correct use of pesticides. MRLs are not safety limits and are always set below levels that would cause harm.

7.2 MRLs applicable to trade to or within the UK are now almost exclusively determined at EC level. The EC programme is expected to establish MRLs for between 450 and 550 pesticide active substances. This Instrument will set new MRLs and revise MRLs for a number of pesticides.

7.3 There is not a great deal of public interest in this policy. Consultations held prior to issue of the 1999 Regulations and in 2003 (in relation to an EC proposal to amend the Community's procedures for setting MRLs) attracted approximately 20 responses in total. The only substantive comments were received from farming, growing and crop protection industries and focussed on technical details, not the overall policy of setting MRLs.

7.4 This Instrument is not politically or legally significant. This is a long established and well understood piece of legislation which is being amended in an uncontroversial and relatively minor fashion.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) was prepared in 2005 when the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations were last consolidated and provides a basis for establishing the impact of amendments to the Regulations.

8.2 In 2003 the Pesticides Safety Directorate undertook a consultation in relation to an EC proposal to amend the Community's procedures for setting MRLs. Responses to the consultation indicated that compliance costs were virtually unchanged from those quoted in the 1999 RIA. We are, therefore, content that the cost information quoted in the RIA remains relevant but will continue to keep this under review.

9. Contact:

Karen Trott at the Department of Environment, Food and Rural Affairs, (Tel: 01904 455750 or email: karen.trott@psd.defra.gsi.gov.uk), can answer any queries regarding the instrument.

Transposition Note

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) Regulations 2007

“The principal Regulations” means the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) Regulations 2005.

Commission Directive 2006/62/EC

Article	Purpose	Implementation	Comment
1-4	Amends Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC in relation to the MRLs for desmedipham, phenmedipham, and chlorfenvinphos.	Regulation 4 and Schedules 1 (for desmedipham and phenmedipham) and 2.	Regulation 4(a) and Schedule 1 amend Schedule 1 to the principal Regulations to insert desmedipham and phenmedipham residue definitions. Regulation 4(b) and Schedule 2 amend Schedule 2 to the principal Regulations to insert MRLs for desmedipham and phenmedipham and substitute new MRLs for chlorfenvinphos.
5	Member States to implement Directive by 20 January 2008 at the latest, and to apply the new MRLs from 21 January 2008.	Regulation 1(3)(a).	Regulation 4 to come into force on 21 January 2008.

Commission Directive 2006/92/EC

Article	Purpose	Implementation	Comment
1-3	Amends Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC in relation to the MRLs for captan, dichlorvos, ethion and folpet.	Regulation 3 and Schedules 1 (for captan) and 2 (all 4 active substances).	Regulation 3(2) and Schedule 1 amend Schedule 1 to the principal Regulations to insert the residue definition for captan. Regulation 3(3) and Schedule 2 amend Schedule 2 to the principal Regulations to insert MRLs for captan and substitute new MRLs for the remaining substances

			covered by the Directive.
4	Member States to implement Directive by 10 May 2007 and apply the new MRLs from 11 May 2007	Regulation 1(3)(b).	Regulation 3 to come into force on 11 May 2007.