



Promoting the Science and Practice of Sustainable Crop Production

Consultation on the implementation of EU pesticides legislation

Response from BCPC

Questions on implementation options

1 What is your preferred approach for a National Action Plan and why?

One of BCPC's objectives is to support crop production policy and practices which seek to limit the use of pesticides to the minimum necessary for the effective control of pests, diseases and weeds, compatible with the protection of human health and the environment. BCPC's members, collectively and individually, have been at the forefront of research and the development, dissemination and implementation of practical guidance to put that policy into effect. This has been the policy of successive UK governments and BCPC would wish any National Action Plan to continue that policy.

It is important to stress at the outset that the emphasis throughout the implementation of this legislation should be on the reduction and management of identified risks to human health or to the environment and not on reducing pesticide usage *per se*. BCPC has argued strongly against all proposals to change the basis for the assessment of pesticides in EU legislation from 'risk' to 'hazard' and would wish to see the UK's risk-based approach maintained wherever possible in all relevant UK legislation. BCPC would also strongly support the statement made in paragraph 3.11 of the Consultation Document:

"An important principle is that the controls which are developed are proportionate to the risks being addressed."

The implementation of this legislation cannot be considered in isolation because alternative approaches to some aspects of crop protection, e.g. enhanced plant breeding through genetic modification, may not be available within the UK because of restrictive legislation based on current public and political attitudes to this technology. It is also likely that there will be increased demands on crop production within all parts of the UK in response to increasing world population and predicted climate change, as we made clear in our response to the consultation on Defra's "Food 2030" Plan, available at:

<http://www.bcpc.org/reports/docs/20091016.pdf>

2 How can NAPs best be used to reduce the risks associated with pesticide use to human health and the environment?

Chapter Four of the Consultation Document sets out the extensive range of current UK legislation and voluntary frameworks relating to pesticide regulation, usage and monitoring. The NAPs should draw these together and provide

means of assessing their effectiveness and of identifying any gaps. Where gaps are identified, it is likely that substantial R&D will be required to determine the most appropriate solutions. Once that has been done, it must be recognised that effective knowledge transfer (KT) will be required if the solutions are to be put into practice. There is likely to be a considerable role for government funding in such R&D and KT.

3 What are your views on introducing a pesticide reduction target in the UK?

BCPC is completely opposed to any 'pesticide reduction target' in the UK. As stated in the first paragraph above, the whole thrust of pesticide policy in the UK should be to limit the use of pesticides to the minimum necessary for the effective control of pests, diseases and weeds, compatible with the protection of human health and the environment. We agree with the view expressed in paragraph 5.9 of the Consultation Document:

"The government does not, therefore, consider that policies to cut the use of particular active substances will deliver any meaningful reduction in risk."

Thus, instead imposing any 'pesticide reduction target', the objective should always be to reduce any identified risk to human health or to the environment arising from pesticide use, taking fully into account all the other consequences that any change of practice may have.

We are aware that some other Member States have set arbitrary 'pesticide reduction targets' and we have consistently argued against this illogical approach in our responses to relevant government consultations. This approach is arbitrary and illogical because it may be the method of application, the timing of application or the frequency of application that determines the risk to human health or to the environment rather than the amount of product or active ingredient. No part of the UK should follow other Member States in this unscientific approach.

Questions on Article 5 training and certification requirements

4 What is your preferred approach and why?

BCPC would support the implementation of legislation based on Option 2 because it would build appropriately on current best practice which has proven effective.

5 What type of training and assessment requirement would be appropriate for those spray operators with "grandfather rights"?

BCPC supports the withdrawal of all 'grandfather rights' exemptions. All spray operators engaged in a given field operation should be assessed by the same standard. The statutory requirement should be for assessment to the specified standard – the need for training should be determined by the applicant.

6 Do you support the extension of the training and certification requirements (both initial and additional) for professional users and distributors to advisors?

Yes. It is appropriate to extend the accepted industry standard in this way.

7 Are there particular offences that you think should automatically incur the withdrawal of a certificate?

Any scheme of sanctions or penalties must be proportionate to the offences that may be committed. Offences for which automatic withdrawal of a certificate would be appropriate are those that would most likely also result in a conviction on prosecution for a breach of a significant statutory requirement.

Questions on Article 6 sales requirements

8 What is your preferred approach and why?

BCPC would support legislation based on Option 2 as this would comply fully with the Directive in a proportionate way.

9 Do you think that micro-distributors meeting the requirements described in Article 6(1) should be exempted from the requirement to have sufficient certificated staff present at the time of sale?

No. All retailers of pesticide products for amateur use should be required to operate to the same standards in this regard. We support the view stated in Option 2 that the current UK legal requirements should not be weakened.

We understand that CRD are investigating ways in which this can be implemented in respect of pesticide products advertised for sale on websites that can be accessed via the Internet, and we support such activity

10 Do you have any comments on the system proposed for restricting the sales of pesticides for professional use to qualified users?

While it would be possible for a seller of pesticides for professional use to ascertain and record that the sale was made to a qualified user, it would not be possible for the seller to obtain information about the status of the person who would be the ultimate user (operator). This will usually be the case where a contractor might be used to apply the pesticide. Responsibility for recording relevant information after the sale must lie with the purchaser.

We understand that CRD are investigating ways in which this can be implemented in respect of pesticide products advertised for sale on websites that can be accessed via the Internet, and we support such activity

Questions on Article 7 information and awareness-raising

11 Do you think that more information should be provided to the general public on the risks and potential effects of pesticides? What information would be useful and how should it be provided?

There is little doubt that the general public is poorly informed on most aspects of the use of pesticides, and on crop protection and crop production more generally. Any information provided by government or official sources must be balanced and soundly based on good science. Information about the use of pesticides should be set properly in context. Any publication of information about the "risks of a pesticide" should include information about the "risks of not using the pesticide". Similarly, any publication of information about the "potential effects of a pesticide" (presumed to mean "adverse effects on human

health or the environment”) should include information about the “actual and potential beneficial effects of using the pesticide”.

12 Can you suggest any improvements to the information gathering systems used by government?

Not specifically, but these systems should be reviewed to ensure they are both effective and cost-effective.

Questions on Article 8 equipment testing

13 What is your preferred approach and why?

BCPC favours Option 2 as this would avoid the undesirable “gold-plating” of making annual testing statutory but would promote the current voluntary standard of annual testing as “best practice”.

14 Do you think a derogation from inspection should be allowed for handheld equipment and knapsacks, or, if not, should a different timetable for inspection be applied to these equipment types?

Yes, principally because the cost of testing would exceed the cost of replacing the equipment. The emphasis should be on the proficiency testing of the operators of such equipment, whose training should emphasise that “best practice” would include periodic inspection and annual self-testing of their equipment.

15 Are there any specific types of pesticide application equipment that you think should be exempted from inspection requirements? These could include: pesticide application equipment not used for spraying pesticides (such as granular applicators or equipment for treating seeds) or equipment that represents a very low scale of use.

BCPC can see no relevant benefit from imposing an inspection requirement for gravity-fed seed drills used to sow pesticide-treated seed or for gravity-fed pesticide granule applicators. Special consideration should, however, be given to the need for an inspection requirement for seed drills and granule applicators that use pneumatic transport systems as recent experience has shown there may be problems with such equipment releasing pesticide-containing dust particles into the atmosphere. Such problems may be best avoided by appropriate testing at the design stage, perhaps controlled by provisions under the Machinery Directive, but there may be a case for periodic inspection once such equipment is in use.

There **may** be a case for a derogation where the scale of use is “very low” (but how is that to be defined?) and the risk to human health or the environment is also known to be very low.

16 Who do you think should deliver the inspection scheme and why?

It would be appropriate to designate the National Sprayer Testing Scheme for this purpose. The NSTS has a proven track record and already operates

throughout the UK. Designation of the NSTS would therefore avoid duplication and unnecessary cost.

Questions on Article 9 aerial applications

17 What is your preferred approach and why?

BCPC supports Option 2 as this would ensure that aerial application would be available in the UK when this was the only practical option for treatment. BCPC agrees that it would not be appropriate to impose blanket restrictions in particular situations where aerial application may be permitted. Instead, BCPC supports the proposed development of a consent-based approach, incorporating the various conditions set out in paragraphs 5.125 to 5.135 of the Consultation Document.

BCPC considers it would be appropriate that there should be cost recovery in this instance because the aerial spraying operators would derive a direct financial benefit from the process.

Questions on Article 11 water protection

18 What is your preferred approach and why?

BCPC would support Option 2 as this could build on existing voluntary measures such as the Voluntary Initiative which has made significant contributions to the protection of water. This Option will, however, require more R&D, for example, on application techniques and equipment and on the transport of pesticides to water.

We agree that the use of pesticides in high risk amenity situations should be given special attention both by the development of specific guidance for some amenity situations and by improved labelling of relevant products.

19 Do you think that government should create a power to establish safeguard zones as envisaged in this Directive, to restrict/prohibit pesticide applications? or do you think it would be preferable to impose no-spray zones as a restriction on all pesticide products? (except those specifically approved for use on river banks or in water)

We support the view expressed in paragraph 5.164 of the Consultation Document that the powers in the Sustainable Use Directive should not be used to create 'safeguard zones'. We agree that it is important that measures under this legislation should not duplicate, overlap or cut across measures that will be taken to implement the Water Framework Directive.

20 Do you support the development of the regulatory risk assessment process with a view to moving towards a system of, for example, 'catchment-based' approvals and/or including consideration of use of application technology?

There may be a case for considering a catchment-based approach to some aspects of pesticide regulation, but the available evidence indicates that more work needs to be done on this before it could be adopted.

The BCPC community has a proven track record in devising, implementing and promoting practical classification schemes for spray quality that yield tangible benefits. Thus BCPC recognises the contribution that appropriate application technology could make to protecting water. In our main submission to the Royal Commission on Environmental Pollution inquiry on crop spraying we drew attention to a drift risk classification scheme that has been proposed for airborne drift and invited the Commission to consider whether the aerial drift risk part of the classification scheme should be incorporated into the regulatory framework: (<http://www.bcpc.org/reports/docs/20041029.pdf> paragraph 14). In our Commentary of the RCEP Report we expressed our extreme disappointment that the Commission had made no comment on this suggestion, because these engineering solutions were immediately available and could make significant and measurable contributions to reducing spray drift: (http://www.bcpc.org/reports/docs/20060517.pdf_page_4).

Questions on Article 12 Protection of specific areas

21 What is your preferred approach and why?

BCPC supports Option 2 as the measures proposed would promote the uptake of “best practice” and provide revised controls or guidance on specific products as each was reviewed.

22 Do you think it is appropriate to prohibit the use of pesticides in public spaces or conservation areas? If yes, what alternative approaches to disease and weed management would you propose in those areas?

BCPC would not favour such prohibition because appropriate assessments of any risks are already included in the product approval process. As in crop production, BCPC favours and promotes the approach of minimising the use of pesticides in public spaces and conservation areas consistent with achieving the required control of the target pests, diseases or weeds.

The challenges of developing cost-effective alternative approaches should not be underestimated were the use of pesticides to be prohibited, as may be seen from the experience in some of those jurisdictions in Canada and the USA where the “cosmetic use” of pesticides has been banned.

Questions on Article 13 storage, handling and waste

23 What is your preferred approach and why?

BCPC supports the enhanced voluntary approach of Option 2, including the need for significant enhancement in the amenity sector.

24 Do you think that take-back schemes or amnesties are an effective way of addressing the risks associated with old pesticide products/packaging that may remain in stores? Can you suggest any other suitable schemes?

A distinction should be made between “take-back schemes” and “amnesties” as we can see no justification for a general requirement on pesticide suppliers to provide “take-back schemes” except when the decision to withdraw a product has been purely a commercial one. The need for exceptional “amnesties” should be limited by there always being a carefully thought-through programme

for appropriate 'disposal' (including approved use) when any product is to be removed from the approved list - other than an emergency revocation.

The safe disposal of pesticide packaging is a separate issue which should be handled through appropriate waste contractors.

25 Do you think that storekeepers should have a legal obligation to comply with standards for store design, or is it preferable to set guidelines?

A legal obligation to comply with specified standards for store design should be considered only if there is evidence that the current approach is not working.

Questions on Article 14 IPM

26 In which areas do you think pesticide users would benefit from more information/advice, to help them adopt integrated approaches?

BCPC supports and promotes an IPM approach to crop protection, extending this where appropriate to Integrated Crop Management (ICM) and Integrated Farm Management (IFM). Although adopting IPM may result in a reduction in pesticide use, it must never be assumed that IPM will always result in reduced use of pesticides. In any event, as already stated above, reduction of use (quantity of pesticide) should not be the principal objective - it is reducing identified risk arising from pesticide use that should be the objective, taking all relevant factors into account.

Although the general principles of IPM are well accepted in crop production in the UK, there is a need for much more R&D in specific crops, and there will be a subsequent need for extensive KT if full benefit is to be obtained from that R&D. It cannot be stated too clearly that producers in the crop production sector in the UK could not reasonably recoup the costs of such R&D and KT because of the extremely competitive market in which they must sell their produce.

Proposals for the development of alternative approaches in crop protection and of decision-support tools appear attractive but the costs of development are considerable. In addition there will be continuing substantial costs associated with all decision-support tools as new data must be provided continually to ensure that such tools are relevant and effective as cultivars, target pests and pesticide products will all change over the years. There is no realistic prospect of recouping the costs of developing and maintaining a range of such decision-support tools through the marketing of services based on such tools.

For all these reasons, BCPC supports Option 1, but in the amenity sector we see considerable merit in the requirement proposed in Option 2 for public bodies to have to take advice from a suitably qualified adviser when drawing up tender specification documents and when determining in-house annual work programmes.

27 Do you have any thoughts on what type of written evidence/record could be provided by pesticide users (of any sector) to demonstrate compliance with IPM principles?

BCPC supports the suggestion made by the Voluntary Initiative that Crop Protection Management Plans could be adapted to provide a written record to demonstrate compliance with IPM principles. We would also agree with the Voluntary Initiative that is important to avoid any duplication of paperwork.

Questions on Article 15 indicators

28 What is your preferred approach and why?

BCPC favours Option 1, the continued use of the existing UK approach and suite of indicators. Whatever approach is adopted, we would take this opportunity to stress the need to interpret changes in any indicators with caution because of the dangers of making simplistic assumptions about apparent relationships between effects and possible causes.

Questions for spray notification and records disclosure

29 What is your preferred approach and why?

BCPC considers Option 1 is appropriate for spray notification on the assumption that recognised “best practice” will be promoted actively.

With regard to the need for signage where crop spraying may be in progress or have been recently undertaken, we would draw attention to the very different legislative provisions for public access to cropped land in Scotland from those in England and Wales. We wrote in detail about this to the Royal Commission on Environmental Pollution (<http://www.bcpc.org/reports/docs/20050228.pdf>).

Under the Countryside and Rights of Way (CROW) Act 2000, a land manager responsible for crop spraying in England and Wales may reasonably assume that no member of the general public will be within the cropped area at any time unless there is public right of way across the field or the land-manager has created a path through the field for use by the general public. In contrast, the Land Reform (Scotland) Act 2003 established a statutory right of access to all land in Scotland with certain exclusions specified in section 6 of the Act. During debate in the Scottish Parliament the Minister gave an assurance that access to cropped land was to be interpreted to include access along tramlines through crops and between the rows of row crops. This interpretation has been incorporated in the Scottish Outdoor Access Code by the statement at paragraph 3.35: “When exercising access rights in a field of crops, avoid damaging crops by: ... • going along any unsown ground (providing this does not damage the crop)”.

<http://www.outdooraccess-scotland.com/upload/Full%20Access%20Code.pdf>

It will be essential to take these differences fully into account in any proposals for notification signage.

For access to spray records BCPC would support the reactive approach of Option 2 on the assumption that similar arrangements can be made in Scotland, Wales and Northern Ireland to those proposed for England. We note that in the PSD 2007 Pilot Study in the East Midlands of England, covering 600 farms and a population of over 100,000, of whom 8,000 were “close neighbours” of farms, only 13 requests for spray records were made.

http://www.pesticides.gov.uk/uploadedfiles/Web_Assets/Pesticides_Forum/PF159.pdf

30 Do you have any information (additional to that presented in our impact assessment) on the potential benefits of spray notification and access to spray records that you can provide us with?

No.

31 Do you think that it would be appropriate for some or all of the costs to government to be offset by charging enquirers a reasonable fee for handling requests for spray records?

Yes. The charging arrangements for provision of information in response to Freedom of Information requests may indicate an appropriate approach.

32 Do you consider that organisations publishing advance spray schedules would be an effective way of increasing public information?

Yes, and this should be promoted because of the likely close proximity of the public to the intended spraying activities.

Would your organisation be prepared to do this as a matter of routine?

Not relevant: BCPC does not undertake such activities.

33 Do you have any comments on the usefulness of public information signs where the public may have access to sprayed areas?

Because of the risk assessments built into the approval process for all pesticides in the UK, there should be no need for such signage except where a 're-entry period' has been specified in the product approval.

34 Since there is limited information available to assess the impacts of an obligation to provide spraying notification on the agricultural/horticultural sector we are seeking the views of those affected groups, in order to prepare a more complete assessment. Therefore we would welcome case studies to demonstrate how such businesses would be affected by the possible approaches in terms of business, financial, administrative and other costs. Can you provide such evidence?

No.

Question on penalties

35 Do you have any comments on the appropriateness of different types of penalty for non compliance – criminal or administrative?

We favour the approach recommended by Professor Macrory of using administrative penalties for the less serious offences and using criminal prosecution for breaches that have serious consequences.

Question on compliance

36 Which approach do you think would be more effective in dealing with non-compliance?

This question seems to presuppose that advance notification would be a legal requirement, a proposition we would oppose (see response to Q29 above).

Questions on funding arrangements and the impact assessments

37 What approach do you prefer and why?

BCPC does not wish to comment in detail on this section but notes with concern that some of the proposals for cost recovery appear to be driven more by administrative convenience than by ensuring any charge would be paid by the appropriate beneficiary.

38 What are your views on the possibility of subsidising certain special applications from wider charges?

BCPC is not in favour of cross-subsidising “certain special applications” from wider charges. It is difficult to see what consistent rationale there could be for such a practice or why the direct beneficiaries should not pay the appropriate costs.

General question on the impact assessment

39 Do you consider that the costs and benefits of the transposition and implementation of the provisions of the SUD and additional measures arising out of the PPP Regulation that are the subject to the Stage One consultation exercise have been accurately assessed in the initial Impact assessments (at Annexes B and C to the consultation paper)? If not, please provide whatever evidence you can to enable a more accurate assessment to be made in the Impact assessment that will form part of the Stage Two consultation exercise.

BCPC is not in a position to comment on this.

General question about implementation

40 Do you have any additional comments in respect of any of the issues covered in this consultation?

In several places we have drawn attention to the need for R&D to fill gaps in existing knowledge and to evaluate new technology. Alongside this is a need for an increase in the support for advanced level training to ensure that the UK will, in future, have enough specialists in all aspects of Crop Protection (entomologists, plant pathologists, weed scientists, pesticide specialists and application specialists) to undertake that R&D and to develop solutions for the implementation of pesticide policy in the most appropriate way to benefit UK crop production, human health and the environment. These specialists will also be required to make significant contributions to the KT that will be essential if this policy on pesticides is to be effective and produce the intended benefits.

BCPC will be pleased to discuss any of the comments made in this response and to provide additional information where this would be helpful.

BCPC will be pleased for this response to be made public without restriction.

Dr Colin Ruscoe
Chairman, BCPC
E-mail: expro@bcpc.org

Annex

BCPC - Promoting the Science and Practice of Sustainable Crop Production

BCPC (The British Crop Production Council) is an independent body which promotes the use of good science and technology in the understanding and application of effective and sustainable crop production. It represents the interests of Government departments, the agrochemical industry, farmers' organisations, advisory services and independent consultants, distributors, research councils, agricultural engineers, environment interests, consumer opinion, training and development.

BCPC derives its opinions from a network of experts in a wide range of organisations involved in crop production, and from its Expert Working Groups on Weeds, Pests & Diseases, Applications, and Seed Technology.

BCPC is a Registered Charity and a Company limited by Guarantee.

BCPC's Corporate Members are:

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Society of Chemical Industry – Bioresources Group

British Crop Production Council
7 Omni Business Centre
Omega Park
ALTON
GU34 2QD

Tel: +44 (0) 1420 593 200
Fax: +44 (0) 1420 593 209
Web: www.bcpc.org
Email: md@bcpc.org