

**2012 No. 1657**

**PESTICIDES**

**The Plant Protection Products (Sustainable Use) Regulations  
2012**

*Made* - - - - - *20th June 2012*

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*Coming into force in accordance with regulation 1*

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- SCHEDULE 1 — Exemption for micro-distributors  
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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy of the European Union(b), measures in the veterinary and phytosanitary fields for the protection of public health(c), and in relation to the environment(d).

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2(e) to, the European Communities Act 1972.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972. It appears to the Secretary of State that it is expedient for references in these Regulations to Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides(f) to be construed as including references to Annexes I to IV of that Directive as amended from time to time.

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Plant Protection Products (Sustainable Use) Regulations 2012 and, subject to paragraph (2), come into force on 18th July 2012.

(2) The following regulations come into force on the dates specified—

- (a) regulation 9 comes into force on 26th November 2015, except paragraph (4) which comes into force on 18th July 2012; and
- (b) regulation 13 comes into force on 26th November 2013.

(3) Any amendment made by Schedule 5 has the same extent as that of the enactment to which it relates.

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- (a) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule. The power of the Secretary of State, as designated Minister, to make Regulations that (i) extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c.46); (ii) extend to Northern Ireland remains exercisable by virtue of article 3(2) of the European Communities (Designation)(No 3) Order 2000 (S.I. 2000/2812), article 2(3) of the European Communities (Designation) (No 2) Order 1999 (S.I. 1999/2027) and article 2(a) of the European Communities (Designation) Order 2008 (S.I. 2008/301); and (iii) apply in Wales remains exercisable by virtue of article 6(1) of the European Communities (Designation) (No 5) Order 2010 (S.I. 2010/2690), article 5(1) of the European Communities (Designation) (No.2) Order 2008 (S.I. 2008/1792) and article 2(a) of the European Communities (Designation) Order 2008.
- (b) S.I. 1972/1811.
- (c) S.I. 1999/2027.
- (d) S.I. 2008/301.
- (e) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.
- (f) OJ No L309, 24.11.2009, p.71.

(4) Any revocation made by regulation 32(3) has the same extent as the enactment to which it relates.

## **Interpretation**

**2.—**(1) In these Regulations—

“aerial spraying” means the application of plant protection products from an aircraft (plane or helicopter) and “aerial spray” shall be construed accordingly;

“aerial spraying permit” means a permit issued by the appropriate United Kingdom competent authority authorising aerial spraying;

“agriculture” includes—

(a) the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not);

(b) dairy-farming;

(c) the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds; and

(d) the preparation and maintenance of land for any such uses;

and “agricultural” shall be construed accordingly;

“the appropriate United Kingdom competent authority” means—

(a) in relation to England and Wales, the Secretary of State;

(b) in relation to Scotland, the Scottish Ministers; and

(c) in relation to Northern Ireland, the Department;

“authorised person” means a person authorised in accordance with regulation 20(1);

“the Department” means the Department of Agriculture and Rural Development in Northern Ireland;

“Directive 1999/45/EC” means Directive 1999/45/EC of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations<sup>(a)</sup>;

“the Directive” means Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides, of which Annexes I to IV are as amended from time to time;

“distributor” means any person who makes a plant protection product available on the market, including wholesalers, retailers, vendors and suppliers;

“environment” means waters (including groundwaters, surface water, transitional waters, coastal waters and marine waters), sediment, soil, air, land, flora and fauna (indigenous or not), and any interrelationship between them, and any relationship with other living organisms;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“inspected” means inspected under a system implemented by a body designated pursuant to Article 8(6);

“Ministers” means the Secretary of State, the Scottish Ministers or the Welsh Ministers;

“plant protection product” has the same meaning as in Article 2(1) of Regulation 1107/2009<sup>(b)</sup>;

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(a) OJ No L200, 30.7.1999, p 1.

(b) OJ No L309, 24.11.2009, p1.

“plant protection product application equipment” means any apparatus specifically designed for the application of plant protection products, including accessories that are essential for the effective operation of such equipment, such as nozzles, manometers, filters, strainers and cleaning devices for tanks;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft, hovercraft or marine structure; and
- (b) any tent to moveable structure;

“professional user” means any person who uses plant protection products in the course of their work activities, including operators, technicians, employers and self-employed people, both in the farming and other sectors and “professional use” shall be construed accordingly;

“Regulation 1107/2009” means Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC(a) and 91/414/EEC(b);

“specified certificate” means—

- (a) a certificate of competence relating to plant protection products recognised by Ministers having been published in a list by Ministers before 18th July 2012, for the purposes of paragraph 4 or 5 of Schedule 2, or paragraphs 7 or 8 of Schedule 3, to the Control of Pesticides Regulations 1986(c);
- (b) a certificate of competence relating to plant protection products recognised by the Department, having been published in a list by the Department before 18th July 2012 for the purposes of paragraph 4 or 5 of Schedule 2, or paragraphs 7 or 8 of Schedule 3, to the Control of Pesticides Regulations (Northern Ireland) 1987(d);
- (c) a certificate of competence recognised by Ministers having been published in a list by Ministers before 18th July 2012, for the purposes of paragraph 3 or 4 of Schedule 2, or paragraph 7 or 8 of Schedule 3, to the Plant Protection Product (Basic Conditions) Regulations 1997(e);
- (d) a certificate of competence recognised by the Department, having been published in a list by the Department before 18th July 2012, for the purposes of paragraph 3 or 4 of Schedule 2, or paragraph 7 or 8 of Schedule 3, to the Plant Protection Product (Basic Conditions) Regulations (Northern Ireland) 1997(f);
- (e) a certificate that was deemed to be a “specified certificate” pursuant to regulation 31(3) and is included in a list referred to in regulation 5(11); or
- (f) a certificate issued by a body that has been designated pursuant to regulation 5(2) and is included in a list referred to in regulation 5(11);

“surface water” means—

- (a) inland waters, except groundwater;
- (b) transitional waters; and
- (c) coastal waters;

“transitional waters” means bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows;

“under supervision” means under the direct and personal supervision, and in the presence, of a person who holds a specified certificate, where such supervision is being provided for the purposes of training.

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(a) OJ No L33, 8.2.1979, p36.  
(b) OJ No L230, 19.8.1991, p1.  
(c) S.I. 1986/1510 amended by S.I. 1997/188.  
(d) S.R.(NI) 1987 No 414 amended by S.R.(NI) 1997 No 469.  
(e) S.I. 1997/189 amended by S.I. 2011/2131.  
(f) S.R (NI) 1997 No 470.

(2) For the purposes of regulations 8, 9(7), 10(4)(b) and 31(1) and (2) “authorised” means authorised in accordance with Regulation 1107/2009.

(3) In these Regulations any reference to an Article by number alone is to be construed as a reference to the Article so numbered in the Directive.

(4) Expressions in the Directive shall have the same meaning in these Regulations as they have in the Directive except where a definition in this regulation ascribes a different meaning.

## **Review**

**3.—**(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 2 and 4 to 32;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The review shall relate to the operation of these Regulations as they have effect in relation to England and Wales only.

(3) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive which is implemented by means of regulations 2 and 4 to 32 is implemented in other Member States.

(4) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(5) The first report under this regulation must be published before the end of the period of five years beginning with 18th July 2012.

(6) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

## **National Action Plan**

**4.** The Secretary of State, the Scottish Ministers and the Department must jointly—

- (a) adopt a National Action Plan in accordance with Article 4 and revise it as necessary;
- (b) list plant protection product application equipment to which regulation 12(1) applies in the National Action Plan in accordance with Article 8(3)(a); and
- (c) describe in the National Action Plan, for the purposes of Article 14(4), how they will ensure that the general principles of integrated pest management as set out in Annex III to the Directive are to be implemented by all professional users by 1st January 2014.

## **Designation of authorities (training and certification)**

**5.—**(1) The appropriate United Kingdom competent authority shall ensure, by 26th November 2013, that systems are established which enable distributors, advisors and professional users to have access to appropriate training by bodies deemed to be designated under paragraph (10) and to obtain certificates which, as a minimum, provide evidence of sufficient knowledge of the subjects listed in Annex I to the Directive either by undergoing training or by other means (“certification systems”).

(2) Before 26th November 2016, for the purposes of Article 5(2), the appropriate United Kingdom competent authority must designate, by including their names on a list published by that authority, bodies responsible for the implementation of certification systems (“awarding bodies”) and that authority may update that list from time to time.

(3) The appropriate United Kingdom competent authority may only designate an awarding body if—

- (a) the authority is satisfied that the body has the necessary capability to implement a certification system; and
- (b) its awards are accredited by a regulator in the United Kingdom or it is subject to independent review by a regulator in the United Kingdom.

(4) An awarding body will no longer be designated if the appropriate United Kingdom competent authority removes its name from its published list of awarding bodies.

(5) The appropriate United Kingdom competent authority may remove the name of an awarding body from its published list of awarding bodies if the awarding body no longer satisfies the criteria set out in paragraph (3).

(6) A specified certificate provides evidence of sufficient knowledge of the subjects listed in Annex I to the Directive acquired by professional users, distributors and advisors either by undergoing training or by other means.

(7) Where the holder of a specified certificate is convicted of an offence under these Regulations, under the Plant Protection Products Regulations 2011(a), or under the Plant Protection Products Regulations (Northern Ireland) 2011(b) that certificate is deemed to be withdrawn immediately on receipt of a notice in writing notifying him or her of that fact served by the appropriate United Kingdom competent authority.

(8) A person whose certificate is deemed to be withdrawn pursuant to paragraph (7) may, by satisfying the relevant criteria, obtain another certificate.

(9) If the holder of a certificate deemed to be withdrawn pursuant to paragraph (7) successfully appeals against his or her conviction, his or her certificate is no longer deemed to be withdrawn.

(10) For the purposes of Article 5(1), the bodies designated by awarding bodies are deemed to be those bodies that offer training on the subjects listed in Annex I to the Directive leading to an accredited award in relation to plant protection products.

(11) Before 26th November 2013, the appropriate United Kingdom competent authority must publish a list of certificates, updated from time to time, that provide evidence of sufficient knowledge of the subjects listed in Annex I to the Directive acquired either by undergoing training or by other means.

(12) In this regulation—

“accredited award” means an award accredited by a regulator in the United Kingdom or an award that is offered by a body that is subject to independent review by a regulator in the United Kingdom;

“advisor” means any person who has acquired adequate knowledge of and advises on pest management and the safe use of plant protection products, in the context of a professional capacity or commercial service, including private, self-employed and public advisory services, commercial agents, food producers and retailers where applicable;

“awarding body” means a body responsible for implementing a certification system;

“a regulator in the United Kingdom” means—

- (a) in relation to England, the Quality Assurance Agency or the Office of Qualifications and Examinations Regulation;
- (b) in relation to Wales, the Welsh Ministers or the Quality Assurance Agency (Wales);
- (c) in relation to Scotland, the Quality Assurance Agency (Scotland) or the Scottish Qualifications Authority;

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(a) S.I. 2011/2131.

(b) S.R. (NI) 2011 No 295 amended by S.R. (NI) 2012 No12.

- (d) in relation to Northern Ireland, the Northern Ireland Council for Curriculum Examinations and Assessment or the Office of Qualifications and Examinations Regulation.

#### **Designation of authorities (inspection of equipment in use)**

6.—(1) For the purposes of Article 8(6), the appropriate United Kingdom competent authority must designate the bodies responsible for implementing inspection systems for plant protection product application equipment (“implementing bodies”) by including their names on a list published by that authority.

(2) The appropriate United Kingdom competent authority must designate implementing bodies if it is of the opinion that those bodies implement inspection systems which comply with the requirements for inspections set out in Annex II to the Directive.

(3) The appropriate United Kingdom competent authority may remove the name of an implementing body from its published list of implementing bodies if it is of the opinion that it no longer satisfies the criterion set out in paragraph (2).

(4) Implementing bodies must keep a register of inspectors who carry out inspections of plant protection product application equipment, such inspections being carried out in order to ascertain whether such equipment meets the relevant requirements set out in Annex II to the Directive (“the register”).

(5) Where an inspector on the register (“registered inspector”) is satisfied that plant protection product application equipment meets the relevant requirements listed in Annex II to the Directive, such equipment will pass inspection and “passed inspection” in this regulation shall be construed accordingly.

(6) Implementing bodies must ensure that the systems implemented by them require registered inspectors to provide the owner or lessee of plant protection product application equipment that has passed inspection with an inspection certificate.

(7) An inspection certificate issued by a registered inspector pursuant to paragraph (6), or by a body responsible for implementing inspection systems for plant protection product application equipment in another Member State is evidence that the plant protection product application equipment to which the certificate relates has passed inspection.

(8) In this regulation, “inspection certificate” means evidence in writing that plant protection product application equipment has passed inspection.

#### **Designation of authorities (aerial spraying)**

7.—(1) For the purposes of Article 9, the appropriate United Kingdom competent authority is the competent authority for—

- (a) authorising aerial spraying;
- (b) establishing the specific conditions under which aerial spraying may be carried out;
- (c) examining requests pursuant to Article 9(4); and
- (d) making information public in accordance with Article 9(3).

(2) For the purposes of Article 9(2)(d), the Civil Aviation Authority is the competent authority responsible for issuing certificates referred to in Schedule 2, paragraph (7)(e).

#### **Requirements for specified certificates**

8.—(1) No person shall use a plant protection product authorised for professional use unless they hold a specified certificate or work under supervision.

(2) No person shall cause or permit any other person to use a plant protection product authorised for professional use unless the person using the product holds a specified certificate or works under supervision.

(3) This regulation does not apply to any person who uses a plant protection product authorised for professional use if—

- (a) he or she was born on or before 31st December 1964; and
- (b) he or she uses plant protection products authorised for professional use on crops, land, produce, buildings, or the contents of buildings, materials or other areas intended to be treated which are owned or occupied by himself or herself or by his or her employer and he or she is competent to use such products.

(4) Paragraph (3) ceases to have effect on 25th November 2015.

### **Requirements for sales and purchases of plant protection products**

**9.**—(1) Subject to Schedule 1 (exemption for micro-distributors), distributors who sell to end-users must ensure that sufficient staff holding specified certificates are available at the time of the sale of plant protection products to provide adequate information to customers as regards use, health and environmental risks and safety instructions to manage those risks for the products in question.

(2) This regulation does not oblige any distributor to employ staff, but any distributor to which the exemption for micro-distributors in paragraph 1 of Schedule 1 does not apply and who does not employ staff must hold a specified certificate.

(3) Schedule 1 has effect.

(4) Distributors who sell plant protection products to persons other than professional users must provide general information regarding the risks for human health and the environment of plant protection product use, in particular on hazards, exposure, proper storage, handling, application and safe disposal in accordance with European Union legislation on waste, as well as regarding low-risk alternatives.

(5) A person (P) must not purchase, or cause another person to purchase, a professional product for use by any individual (including P) unless that individual holds a specified certificate or, if that individual does not hold a certificate, either of the conditions set out in paragraph (6) is satisfied.

(6) The conditions referred to in paragraph (5) are—

- (a) where a professional product is purchased for use by P, P intends to work under supervision; or
- (b) where a professional product is purchased for use by an individual other than P, P must reasonably believe that such an individual will use that product under supervision.

(7) In this regulation, “professional product” means a plant protection product authorised for professional use.

### **Use of plant protection products**

**10.**—(1) A person who uses, or causes or permits an individual to use, a plant protection product must ensure—

- (a) that all reasonable precautions are taken to protect human health and the environment;
- (b) that the application of the plant protection product is confined to the crop, land, produce, buildings, contents of buildings, materials or other areas intended to be treated; and
- (c) when the product is used in any of the places listed in paragraph (2), that the amount used and the frequency of use are as low as reasonably practicable.

(2) The places referred to in paragraph (1)(c) are—

- (a) areas used by the general public or by vulnerable groups;
- (b) areas in the close vicinity of healthcare facilities;

- (c) protected areas of the type referred to in paragraph 1(v) of Annex IV to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(a)</sup> (“Directive 2000/60/EC”) or other areas identified for the purposes of establishing the necessary conservation measures in accordance with the provisions in Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds<sup>(b)</sup> and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(c)</sup>;
- (d) areas recently treated with a plant protection product and used by or accessible to agricultural workers;
- (e) on or along roads, railway lines, very permeable surfaces, or other infrastructure close to surface water or groundwater; or
- (f) on sealed surfaces with a high risk of run-off into surface water or sewage systems.

(3) A person who uses, or causes or permits an individual to use a plant protection product in the circumstances set out in paragraph (4) must, so far as is reasonably practicable, use or cause or require the use of a plant protection product not classified as dangerous for the aquatic environment pursuant to Directive 1999/45/EC<sup>(d)</sup> nor containing priority hazardous substances as referred to in Article 16(3) of Directive 2000/60/EC (“priority hazardous substances”).

(4) The circumstances referred to in paragraph (3) are—

- (a) the use of the plant protection product represents a risk to the aquatic environment or drinking water; and
- (b) there is a product authorised for use in the particular situation which is neither classified as dangerous for the aquatic environment pursuant to Directive 1999/45/EC nor containing priority hazardous substances.

(5) Where necessary in order to protect non-target aquatic organisms, the appropriate United Kingdom competent authority must include in authorisations and permits granted under Regulation 1107/2009 a requirement for an appropriately sized buffer zone.

(6) In this regulation—

- (a) “areas used by the general public” includes public parks and gardens, sports and recreation grounds, school grounds and children’s playgrounds;
- (b) “sealed surfaces” means surfaces that do not allow liquid to pass through them;
- (c) “vulnerable groups” means persons needing specific consideration when assessing the acute and chronic health effects of plant protection products, including pregnant and nursing women, the unborn, infants and children, the elderly and workers and residents subject to high plant protection product exposure over the long term.

### **Inspection of specified plant protection product application equipment**

**11.**—(1) This regulation applies in relation to the following plant protection product application equipment in professional use (“specified equipment”)—

- (a) spraying equipment mounted on trains or aircraft;
- (b) boom sprayers longer than 3 metres, including boom sprayers mounted on sowing equipment and variable geometry booms; and
- (c) vehicle-mounted or drawn sprayers which broadcast spray droplets, in an air stream produced by forced air, which carry upwards and outwards from the source of the spray.

(2) A person who owns or leases specified equipment that was purchased for the first time on or before 26th November 2011 must ensure that it is inspected before 26th November 2016.

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(a) OJ No L 327, 22.12.2000, p1.

(b) OJ No L 20, 26.1.2010, p7.

(c) OJ No L206, 22.7.1992, p7.

(d) OJ No L200, 30.7.1999, p1.

(3) Paragraph (2) ceases to have effect on 26th November 2016.

(4) A person who owns or leases specified equipment that was purchased for the first time after 26th November 2011 and is less than five years old starting with the date of first purchase must ensure that it is inspected before the fifth anniversary of the date of first purchase.

(5) A person who owns or leases specified equipment that is more than five years old starting with the date of first purchase must ensure that—

- (a) prior to 26th November 2020 such equipment is inspected at least once every five years;
- (b) after 26th November 2020 such equipment is inspected at least once every three years.

(6) Where by 26th November 2020 specified equipment that is more than five years old starting with the date of first purchase has not been inspected for three years, the person who owns or leases that equipment must ensure that it is inspected by that date.

### **Inspection of other plant protection product application equipment**

**12.**—(1) This regulation applies in relation to plant protection product application equipment in professional use other than—

- (a) plant protection product application equipment to which regulation 11(1) applies;
- (b) handheld equipment; and
- (c) knapsack sprayers.

(2) A person who owns or leases other equipment that was purchased for the first time on or before 26th November 2011 must ensure that it is inspected before 26th November 2016.

(3) Paragraph (2) ceases to have effect on 26th November 2016.

(4) A person who owns or leases other equipment that was purchased for the first time after 26th November 2011 and is less than five years old starting with the date of first purchase must ensure that it is inspected before the fifth anniversary of the date of first purchase.

(5) A person who owns or leases other equipment that is more than five years old starting with the date of first purchase must ensure that it is inspected at least once every six years.

(6) In this regulation, “other equipment” means plant protection product application equipment to which this regulation applies.

### **Inspection by professional user**

**13.** Professional users must conduct regular calibrations and technical checks of the plant protection product application equipment they use having regard to the nature of the equipment and in accordance with the training referred to in regulation 5(1).

### **Use of equipment**

**14.**—(1) A person who owns or leases plant protection product application equipment must ensure that such equipment is not used by a professional user unless it has passed inspection conducted in accordance with the requirements of regulation 11 or 12 (as the case may be).

(2) In this regulation “passed inspection” has the same meaning as in regulation 6(5).

### **Aerial spraying**

**15.**—(1) Subject to paragraph (2), no person shall carry out aerial spraying or cause or permit another person to carry out aerial spraying.

(2) A person may carry out aerial spraying or cause or permit another person to carry out aerial spraying if such spraying is authorised by an aerial spraying permit.

(3) Schedule 2 (aerial spraying permits) has effect.

(4) The pilot carrying out the aerial spraying must comply with the conditions set out in the aerial spraying permit which are identified as being for the pilot.

- (5) The holder of the aerial spraying permit (“permit holder”) must—
- (a) comply with the conditions set out in the aerial spraying permit which are identified as being for the permit holder; and
  - (b) take all reasonable precautions to ensure that the pilot complies with the conditions set out in the aerial spraying permit which are identified as being for the pilot.
- (6) The appropriate United Kingdom competent authority must—
- (a) keep records of the applications for aerial spraying permits and the information accompanying those applications which is required by paragraph 3 of Schedule 2; and
  - (b) make available to the public information contained in those records such as the area to be sprayed, the provisional day and time of spraying and the type of plant protection product in accordance with its national law or European Union law.

### **Applications for aerial spraying permits: provision of information**

16.—(1) A person making an application for an aerial spraying permit must not—

- (a) make a statement which that person knows to be false in a material particular;
- (b) recklessly make a statement which is false in a material particular; or
- (c) intentionally fail to disclose any material particular.

(2) A person must not cause or permit any person, in relation to an application for an aerial spraying permit, to make a statement which the former knows to be false in a material particular.

### **Handling and storage of plant protection products and treatment of their packaging and remnants**

17.—(1) A professional user or distributor who carries out any of the operations set out in paragraph (2) must take all reasonable precautions to ensure that such operations do not endanger human health or the environment.

(2) The operations referred to in paragraph (1) are—

- (a) the storing, handling, diluting or mixing of plant protection products before application;
- (b) the handling of the packaging and remnants of plant protection products;
- (c) the disposal of tank mixtures remaining after the application of plant protection products;
- (d) the cleaning of plant protection product application equipment after the application of that product;
- (e) the recovering or disposing of plant protection product remnants and their packaging.

(3) No person shall combine or mix for use two or more plant protection products which are anticholinesterase compounds unless such a combination or mixture is expressly authorised or permitted by —

- (a) the conditions of an authorisation or permit granted in accordance with Regulation 1107/2009 given in relation to at least one of those plant protection products; or
- (b) the labelling of the container in which at least one of those plant protection products has been sold, supplied or otherwise marketed to that person.

(4) No person shall combine or mix for use two or more plant protection products unless—

- (a) all of the conditions of the authorisation or the permit given in relation to each of those plant protection products; and
- (b) the conditions on the label of the container in which each of those plant protection products has been sold, supplied or otherwise marketed to that person

are complied with.

(5) A person who stores plant protection products for professional use must ensure that such products are stored in areas that are constructed in such a way as to prevent unwanted releases.

(6) A person must not store a plant protection product, or cause or permit another person to do so, unless storage of that product is authorised or permitted under a valid authorisation or permission granted in accordance with Regulation 1107/2009.

### **Code of practice**

**18.**—(1) The appropriate United Kingdom competent authority may from time to time, for the purpose of providing practical guidance in respect of any requirements in these Regulations or Regulation 1107/2009—

- (a) prepare and issue such codes of practice as are in its opinion suitable for that purpose; and
- (b) revise any such code by revoking, amending or adding to the provision of the code.

(2) The appropriate United Kingdom competent authority must not issue or revise a code of practice under paragraph (1) without having consulted such persons, government departments and bodies that appear to it to be appropriate.

(3) Where a code of practice is issued or revised by the appropriate United Kingdom competent authority under paragraph (1), that authority must issue a notice identifying the code in question and stating the date on which it, or the revision, is to take effect.

(4) The appropriate United Kingdom competent authority may withdraw a code issued under paragraph (1) or any part of it and, if it does so, it must issue a notice identifying the code in question or relevant part of it and stating the date on which it, or the relevant part of it, is to cease to have effect.

(5) A failure on the part of any person to follow any guidance contained in a code issued under paragraph (1) shall not render that person liable to proceedings of any kind.

(6) In all civil and criminal proceedings any code issued under this regulation shall be admissible in evidence and if the failure to follow any guidance in 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.

### **Enforcement**

**19.**—(1) These Regulations are enforced by—

- (a) the Secretary of State in relation to England;
- (b) the Welsh Ministers in relation to Wales;
- (c) the Scottish Ministers in relation to Scotland; and
- (d) the Department in relation to Northern Ireland.

(2) The Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of offences under these Regulations in so far as those functions relate to offences committed in England.

### **Powers of authorised persons**

**20.**—(1) The Secretary of State (in relation to England), the Welsh Ministers (in relation to Wales), the Scottish Ministers (in relation to Scotland) and the Department (in relation to Northern Ireland) may authorise any person to exercise the powers set out in Schedule 3.

(2) An authorised person, if so authorised by the person authorising him or her, may prosecute before a magistrates' court in England and Wales proceedings for an offence under these Regulations.

(3) A person may be authorised for specified purposes.

(4) An authorisation must be evidenced in writing.

(5) The Secretary of State and the Welsh Ministers acting jointly in relation to local authority officers in England and Wales, and the Scottish Ministers in relation to local authority officers in Scotland, may specify descriptions of local authority officers who may be authorised to exercise

enforcement powers and may direct that an officer of a particular description may only be appointed to exercise them for a specified purpose.

(6) Any specification or direction under paragraph (5) must be in writing.

(7) If the Secretary of State and Welsh Ministers or the Scottish Ministers specify a description of local authority officers under paragraph (5), a local authority may authorise any of its officers falling within that description to exercise enforcement powers.

(8) Schedule 3 (powers of authorised persons) has effect.

(9) In this regulation “enforcement powers” means the powers set out in Schedule 3.

(10) In this regulation “local authority” means—

(a) in relation to England—

(i) where there is a unitary authority, within the meaning of the Local Government Changes for England Regulations 1994<sup>(a)</sup>, that authority;

(ii) where there is not a unitary authority—

(aa) in a metropolitan district, the council of that district;

(bb) in a non-metropolitan district, the council of that county or the council of a district within the county area;

(cc) in each London borough, the council of that borough;

(iii) in the City of London, the Common Council; or

(iv) the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council; and

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(b)</sup>.

### **Evidence of authorisation**

**21.**—(1) An authorised person performing functions under these Regulations must produce, on request, evidence of his or her authorisation.

(2) An authorised person shall state, if requested—

(a) his or her name;

(b) the functions to be performed; and

(c) the grounds for proposing to perform those functions.

### **Non-compliance with notices**

**22.**—(1) A person must comply with the provisions of a notice served under paragraph 6(1) or 7(1) or (3) of Schedule 3.

(2) An authorised person may make arrangements to ensure that the requirements in a notice issued by them are complied with if the person on whom the notice was served fails to comply with the requirements in the notice.

(3) Any costs reasonably incurred by any authorised person in ensuring that the requirements of a notice are complied with may be recovered, on demand, from the person on whom the notice was served.

### **Obstruction of an authorised person**

**23.**—(1) A person—

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(a) S.I. 1994/867, to which there are amendments not relevant to these Regulations.

(b) 1994 c.39.

- (a) must not intentionally obstruct any authorised person performing his or her functions under these Regulations; and
  - (b) must comply with any requirement imposed by an authorised person performing his or her functions under these Regulations.
- (2) A person purporting to give information required by an authorised person performing his or her functions under these Regulations must not—
- (a) make a statement which they know to be false in a material particular;
  - (b) recklessly make a statement which is false in a material particular; or
  - (c) intentionally fail to disclose any material particular.

## **Offence**

**24.** A person who contravenes or fails to comply with—

- (a) regulation 8(1) or (2);
- (b) regulation 9(1), (2), (4) or (5);
- (c) regulation 10(1) or (3);
- (d) regulation 11(2), (4), (5) or (6);
- (e) regulation 12(2), (4) or (5);
- (f) regulation 13;
- (g) regulation 14(1);
- (h) regulation 15(1), (4) or (5);
- (i) regulation 16(1) or (2);
- (j) regulation 17(1), (3), (4), (5) or (6);
- (k) regulation 22(1);
- (l) regulation 23(1) or (2); or
- (m) regulation 31(1)

is guilty of an offence.

## **Offences by bodies corporate**

**25.—**(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he or she, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner or any person who was purporting to act in any such capacity, he or she as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

## Defences

**26.**—(1) In any proceedings for an offence under these Regulations, other than in relation to regulation 23(1)(a) or (2), it is a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) A person is to be taken to have established the defence provided by paragraph (1) if they prove—

- (a) that they acted under instructions given to them by their employer; or
- (b) that they acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,

and in either case that they took all such steps as were reasonably open to them to ensure that no offence would be committed.

(3) If, in any case, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) an act or omission by another person, other than the giving of instructions to the person charged with the offence by their employer; or
- (b) reliance on information supplied by another person,

the person charged shall not, without the permission of the court, be entitled to rely on that defence unless within a period ending seven clear days before the hearing, they have served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in their possession.

## Penalties

**27.**—(1) A person guilty of an offence under these Regulations, other than for contravention of or failure to comply with regulation 22(1) or 23(1)(b) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence for contravention of or failure to comply with regulation 22(1) or 23(1)(b) is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(3) For the purposes of the jurisdiction of a court to try offences under these Regulations, any offence under these Regulations may be treated as having been committed in any place in the United Kingdom.

## Service of documents

**28.** Schedule 4 (service of documents) has effect.

## Agency arrangements

**29.**—(1) The Scottish Ministers may arrange, with the agreement of the Secretary of State, for any of their functions under or for the purposes of the Directive and these Regulations to be exercised on their behalf by the Secretary of State.

(2) An arrangement under these Regulations in respect of any functions may include provisions for any fees and charges payable to the Scottish Ministers pursuant to regulation 6 of the Plant Protection Product (Fees and Charges) Regulations 2011(a) in respect of that function to be collected by the Secretary of State on behalf of the Scottish Ministers.

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(a) S.I. 2011/2132

(3) An arrangement under these Regulations shall be in writing and be signed by, or on behalf of, the Scottish Ministers and the Secretary of State and such an arrangement may be subject to such conditions (including conditions as to the costs) as may be agreed.

### **Application to the Crown**

**30.**—(1) Subject to paragraph (2), an authorised person may perform any of his or her functions under these Regulations in relation to land in which there is a Crown interest or Duchy interest.

(2) An authorised person shall not perform any functions—

- (a) in relation to land in which there is no interest other than a Crown interest or Duchy interest; or
- (b) in relation to land which is exclusively in Crown occupation.

(3) In this regulation—

“Crown interest” means any interest belonging to Her Majesty in right of the Crown or belonging to a government department or an office holder in the Scottish Administration or held in trust for Her Majesty for the purposes of a government department or the Scottish Administration;

“Crown occupation” means occupation by Her Majesty in right of the Crown or occupation by a government department or the Scottish Administration; and

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

### **Transitional provisions**

**31.**—(1) No person shall sell, supply or otherwise market to an end-user a plant protection product authorised for agricultural use unless that person—

- (a) has obtained a specified certificate; or
- (b) sells or supplies that plant protection product under supervision.

(2) In this regulation, “plant protection product authorised for agricultural use” means a plant protection product (other than a plant protection product with methyl bromide or chloropicrin as one of its active substances) authorised for one or more of the following uses—

- (a) agriculture;
- (b) horticulture (including amenity horticulture);
- (c) forestry
- (d) use in or near water other than for amateur, public hygiene or anti-fouling uses;
- (e) use as an industrial herbicide, including weed-killers for use on land not intended for the production of any crop.

(3) A certificate issued before 26th November 2013 which evidences knowledge of the safe use of plant protection products acquired by undergoing training or by other means, other than—

- (a) a certificate referred to in paragraphs (a) to (d) in the definition of “specified certificate” in regulation 2(1); and
- (b) a certificate issued by a body that has been designated under regulation 5(2),

is deemed to be a specified certificate until 26th November 2013 when it ceases to be a specified certificate for the purposes of these Regulations unless it appears in a list referred to in regulation 5(11).

(4) Paragraphs (1) and (2) cease to have effect after midnight on 25th November 2015.

(5) Any consent—

- (a) under the Plant Protection Products (Basic Conditions) Regulations 1997<sup>(a)</sup> granted by, or on behalf of, the Secretary of State or the Scottish Ministers; or
- (b) under the Plant Protection Products (Basic Conditions) Regulations (Northern Ireland) 1997<sup>(b)</sup> granted by or on behalf of the Department,

which is valid on 18th July 2012 is deemed to be an authorisation in accordance with Regulation 1107/2009 and any conditions in that consent are deemed to be requirements imposed under Regulation 1107/2009.

### **Amendments and revocations**

**32.**—(1) The enactments specified in the Table in Schedule 5 are amended to the extent specified in the Table.

(2) Schedule 5 shall have effect.

(3) The following Regulations are revoked—

- (a) the Plant Protection Products (Basic Conditions) Regulations 1997; and
- (b) the Plant Protection Products (Basic Conditions) Regulations (Northern Ireland) 1997.

*Richard Benyon*

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

20th June 2012

## **SCHEDULE 1**

Regulation 9(3)

### **Exemption for micro-distributors**

#### **The exemption**

**1.** Regulation 9(1) does not apply in relation to a distributor—

- (a) if the distributor was a micro-distributor in its preceding financial year and the accounts for that period are closed;
- (b) if the distributor had an annual turnover which did not exceed 2 million euros in its preceding financial year; and
- (c) if the only plant protection products offered for sale by that distributor are for non-professional use and are not formulations classified as toxic, very toxic, carcinogenic, mutagenic or toxic for reproduction pursuant to Directive 1999/45/EC.

#### **Micro-distributor**

**2.** A distributor is a micro-distributor in a financial year if the number of weeks when the distributor has fewer than 10 employees is greater than the number of weeks when the distributor has 10 or more employees.

#### **Number of employees of a distributor**

**3.** A distributor has fewer than 10 employees in a week if the total number of hours for which all the employees of the distributor are contracted to work in that week is less than 375.

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(a) S.I. 1997/189 amended by S.I.2011/2131.

(b) S.R.(NI) 1997 No 470.

## **Employees**

**4.**—(1) “Employee” means an individual who has entered into or works under a contract of employment.

(2) In paragraph (1) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing.

## **Franchises**

**5.** A distributorship that is carried on pursuant to a franchise agreement is treated as part of the distributorship of the franchisor (and not as a separate distributorship carried on by the franchisee).

## **Interpretation**

**6.**—(1) “Annual turnover” means the amounts derived from the provision of goods and services falling within the distributor’s ordinary activities, after deduction of—

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived.

(2) “Financial year” means the period of twelve months for which the income of the distributor is computed for the purposes of the tax legislation that applies to it.

(3) “Preceding financial year” means the financial year immediately preceding the distributor’s current financial year.

(4) References to an amount in euros includes references to an equivalent amount in sterling, and the equivalent amount in sterling is calculated using the London closing exchange rate for sterling and the euro on the last day of the distributor’s preceding financial year.

(5) Paragraphs 2 to 5 and this paragraph apply in relation to the interpretation of the exemption in paragraph 1.

## **SCHEDULE 2**

Regulation 15(3)

### **Aerial spraying permits**

**1.** An application for an aerial spraying permit must be made to the appropriate United Kingdom competent authority.

**2.** The appropriate United Kingdom competent authority must publish the deadlines by which applications for aerial spraying must be submitted to the competent authorities and the deadlines by which the competent authorities must communicate their decisions on applications for aerial spraying to the applicants.

**3.** An application for an aerial spraying permit must be accompanied by the following (“the required information”)—

- (a) a request for approval of an application plan or confirmation that an application plan has already been approved by the appropriate United Kingdom competent authority;
- (b) information about the provisional time of spraying and the amount and type of plant protection product or products to be applied; and
- (c) evidence to show that the conditions set out in paragraph 7, other than at sub-paragraph (b), are satisfied.

**4.** If an applicant for an aerial spraying permit—

- (a) has been informed by the appropriate United Kingdom competent authority that the application plan accompanying that application has been approved; but

- (b) has not received confirmation that an aerial spraying permit covering all or part of the applications referred to in that plan has been granted before the published deadline for the appropriate United Kingdom competent authority to communicate that decision,

the application for that aerial spraying permit is deemed to be approved.

**5.** If the application for an aerial spraying permit—

- (a) is not accompanied by the required information; or
- (b) has not been submitted by the relevant deadline established under paragraph 2,

the relevant United Kingdom competent authority must inform the applicant of that fact by a notice in writing and need not consider the application.

**6.** Where an application for an aerial spraying permit is not accompanied by the required information, the application is only treated as being submitted when the last piece of that information is submitted to the appropriate United Kingdom competent authority.

**7.** An aerial spraying permit must not be issued unless the application plan is approved and the following conditions are met—

- (a) there must be no viable alternatives, or there must be clear advantages in terms of reduced impacts on human health and the environment as compared with land-based application of plant protection products;
- (b) the application contains information about the provisional time of spraying and the amounts and type of plant protection product or products to be applied;
- (c) the plant protection product or products to be used must be explicitly authorised for aerial spraying by the appropriate United Kingdom competent authority following a specific assessment addressing the risks from aerial spraying;
- (d) the application contains the reference numbers of the specified certificates of all individuals who will be carrying out the aerial spraying or any part of it;
- (e) every aircraft to be used for aerial spraying must be identified in an aerial application certificate granted by the Civil Aviation Authority under article 131(2) of the Air Navigation Order 2009(a) and held by the operator of such aircraft;
- (f) the area to be sprayed must not be in close proximity to any residential area; and
- (g) after 31st December 2012, the aircraft is equipped with accessories that constitute the best available technology to reduce spray drift.

**8.** The appropriate United Kingdom competent authority must specify in each aerial spraying permit it issues—

- (a) the conditions under which aerial spraying must be carried out;
- (b) the conditions which apply to the individual carrying out the aerial spraying (“the pilot”) or the holder of the aerial spraying permit (“the permit holder”) or to both;
- (c) specific risk management measures to ensure that there are no adverse effects on the health of bystanders if the area to be sprayed by way of aerial spraying is in close proximity to areas open to the public; and
- (d) the necessary measures to be taken by the permit holder for warning residents and bystanders in due time, and the measures necessary to protect the environment in the vicinity of the area sprayed.

**9.** A United Kingdom competent authority may withdraw or amend an aerial spraying permit it has issued where—

- (a) any of the conditions in paragraph 7, other than sub-paragraph (b), are not or are no longer satisfied;

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(a) S.I. 2009/3015.

- (b) false or misleading information was supplied concerning the facts on the basis of which the permit was granted;
- (c) a condition in the permit has not been met;
- (d) on the basis of developments in scientific and technical knowledge, the manner of use of the plant protection product or products referred to in the permit or the amounts used or both can be amended; or
- (e) the permit holder or the pilot has contravened or has failed to comply with any of the obligations imposed upon them under these Regulations, the Plant Protection Products Regulations 2011(a) or the Plant Protection Products Regulations (Northern Ireland) 2011(b).

10. The appropriate United Kingdom competent authority may withdraw or amend an aerial spraying permit it has issued at the request of the permit holder.

11. If the permit holder requests that the permit be amended or withdrawn by the appropriate United Kingdom competent authority, that person must state the reasons for the request.

12. If the appropriate United Kingdom competent authority withdraws or amends an aerial spraying permit it has issued in accordance with paragraph 9 or 10, it shall immediately inform the permit holder.

## SCHEDULE 3

Regulation 20(8)

### Powers of authorised persons

#### **Powers of entry**

1.—(1) An authorised person may enter any premises (except any premises used wholly or mainly as a private dwelling) if he or she has reasonable grounds to believe that any plant protection product is being, or has been, applied to or stored on or in them, transported on or applied by means of them and that it is necessary to enter for the purpose of ensuring that these Regulations are complied with.

(2) An authorised person must exercise powers of entry at a reasonable hour unless it appears to the authorised person that there are grounds for suspecting that the exercise of the power of entry may be frustrated if he or she seeks to exercise them at a reasonable hour.

(3) An authorised person who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before his or her entry.

#### **Search warrants**

2.—(1) A justice of the peace in England and Wales, a lay magistrate in Northern Ireland, or a sheriff, stipendiary magistrate or justice of the peace in Scotland may issue a warrant permitting an authorised person to enter any premises if necessary by reasonable force for the purposes of the enforcement of these Regulations, if satisfied that the authorised person has reasonable grounds for requiring entry and any of the conditions set out in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or

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(a) S.I. 2011/2131.

(b) S.R. (NI) 2011 No 295 amended by S.R. (NI) 2012 No 12.

(d) the premises are unoccupied or the occupier is temporarily absent.

(3) Where an authorised person applies for a warrant under sub-paragraph (1), he or she must state—

- (a) the grounds upon which the application is made;
- (b) that the warrant would be issued under this Schedule; and
- (c) what is being sought.

(4) An application for a warrant under sub-paragraph (1) must be supported by an information in writing, in England and Wales; on sworn complaint in writing in Northern Ireland; or by evidence on oath in Scotland.

(5) An application for a warrant under sub-paragraph (1), where the condition satisfied is set out in sub-paragraph (2)(a), must be made on notice, and where the condition satisfied is set out in sub-paragraph(2)(b), (c) or (d), must be made without notice.

(6) The authorised person shall answer on oath any question that the justice of the peace, lay magistrate, sheriff or stipendiary magistrate hearing the application asks him or her.

(7) A warrant shall authorise entry on one occasion only.

(8) A warrant shall specify—

- (a) the name of the person who applies for it;
- (b) the date on which it is issued;
- (c) that it is issued under this Schedule; and
- (d) the address of the premises to be entered and searched;

and shall identify, so far as is practicable, what is to be sought.

(9) The court shall provide two copies of the warrant certified as such.

### **Execution of warrants**

**3.**—(1) Entry and search under a warrant must be within three months from the date of its issue.

(2) Where the occupier of the premises to be entered and searched is present at the time when an authorised person seeks to execute a warrant to enter and search them, the authorised person shall—

- (a) identify himself or herself to the occupier and shall produce to the occupier evidence of his or her authority;
- (b) produce the warrant to the occupier; and
- (c) supply the occupier with a certified copy of it.

(3) Where the occupier of the premises is not present at the time when an authorised person seeks to execute such a warrant, but some other person who appears to the authorised person to be in charge of the premises is present, sub-paragraph (2) shall have effect as if any reference to the occupier were a reference to that other person.

(4) If there is no person present who appears to the authorised person to be in charge of the premises, the authorised person must leave a copy of the warrant in a prominent place on the premises.

(5) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(6) An authorised person executing a warrant shall make an endorsement on it stating whether what was sought was found.

(7) A warrant shall be returned to the designated officer for the local justice area in which the justice of the peace, lay magistrate, sheriff or stipendiary magistrate was acting when the warrant was issued—

- (a) when it has been executed; or

(b) in the case of a warrant which has not been executed, upon the expiry of three months from the date of its issue or sooner.

(8) In Scotland the designated officer is the sheriff clerk if the warrant was issued by a sheriff, and the clerk of the justice of the peace's court if the warrant was issued by a justice of the peace or stipendiary magistrate.

(9) In Northern Ireland the designated officer is the clerk of the court for the area in which the lay magistrate was acting when the warrant was issued.

(10) A warrant which is returned under sub-paragraph (7) shall be retained for 12 months from its return by the designated officer for the local justice area.

(11) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, such inspection shall be allowed.

### **General powers**

**4.**—(1) An authorised person exercising powers of entry pursuant to paragraph 1(1), or in accordance with a warrant granted under paragraph 2(1), may—

- (a) search for any item, if necessary using reasonable force;
- (b) open or examine, or both, anything that is on, attached to or otherwise forms part of the premises, if necessary using reasonable force;
- (c) take with him or her any persons and equipment or materials he or she considers necessary for the enforcement of these Regulations;
- (d) open any container, if necessary using reasonable force;
- (e) carry out any searches, inspections, measurements and tests;
- (f) take samples;
- (g) have access to, and inspect and copy any documents, books or records (in whatever form they are held) which the authorised person has reason to believe may be relevant in connection with the enforcement of these Regulations and remove them to enable them to be copied;
- (h) photograph or copy anything which the authorised person has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations; and
- (i) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.

(2) Any person who accompanies an authorised person in accordance with sub-paragraph (1)(c) may perform any of the authorised person's functions but only under the supervision of that authorised person.

(3) Where an authorised person takes samples under sub-paragraph (1)(f) he or she may only take an amount that is reasonably needed for the performance of his or her functions under these Regulations.

(4) Nothing in sub-paragraph (1)(g), (h) or (i) shall be taken to compel the production by any person of a document which he or she would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court in England and Wales, or Northern Ireland, or on grounds of confidentiality of communications in proceedings in the Court of Session in Scotland.

(5) An authorised person may require any person to give him or her information as to the formulation, effects or use of any substance.

(6) An authorised person performing functions under these Regulations may require a person whom he or she has reasonable cause to believe is able to give information which will assist in the execution of these Regulations—

- (a) to answer such questions as the authorised person thinks it appropriate to ask; and
- (b) to sign a declaration of the truth of the answers provided.

(7) Any person to whom questions are put under sub-paragraph (6) may nominate a person to be with him or her when he or she answers.

(8) When a person answers any such questions the only other persons who may be present, apart from the questioner, are—

- (a) the person (if any) nominated under sub-paragraph (7); and
- (b) any person authorised by the authorised person to be present.

(9) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (6) shall be admissible in evidence in the United Kingdom against that person, his or her spouse, or his or her civil partner in proceedings for any offence.

### **Protection of authorised persons**

**5.** An authorised person shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her functions as an authorised person if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

### **Seizure and disposal of products and requirements to recover**

**6.—(1)** If an authorised person is of the opinion that a person is committing, has committed or is likely to commit an offence contrary to these Regulations, the authorised person has the power to—

- (a) seize or dispose of a plant protection product or both, or serve a notice on the holder of any approval, authorisation or permission relating to the plant protection product, the owner of the plant protection product or any other person appearing to be in charge of it requiring him or her to dispose of it; or
- (b) seize or dispose of anything treated with a plant protection product (“treated item”) or both, or serve a notice on any person appearing to the authorised person to be the owner or the person in charge of anything so treated requiring him or her to dispose of it; or
- (c) serve a notice on the holder of any approval, authorisation or permission relating to the plant protection product, the owner of the plant protection product or any other person appearing to the authorised person to be in charge of it requiring him or her to take such remedial action as appears to the authorised person to be necessary, including recovery of the plant protection product from the market in the United Kingdom.

(2) If an authorised person has exercised his or her power under sub-paragraph (1)(a) or (b) to seize or dispose, or both, he or she must serve a notice on the relevant person informing that person that the power has been exercised.

(3) A notice served under this paragraph must be in writing.

(4) A notice served under sub-paragraph (1) must give a time limit for compliance with the notice.

(5) A notice served under sub-paragraph (1) or (2) must—

- (a) state that the authorised person is of the opinion that a person is committing, has committed or is likely to commit an offence contrary to these Regulations and specify the offence;
- (b) specify why the authorised person is of that opinion;
- (c) identify any plant protection product or treated item to which the notice relates; and
- (d) state the quantity of any plant protection product or treated item to which the notice relates.

(6) An authorised person may withdraw a notice served under this paragraph at any time.

(7) An authorised person may serve a person with a notice under this paragraph even if a previous notice served on that person has been withdrawn.

(8) In sub-paragraph (2) “relevant person” means—

- (a) in relation to the seizure, disposal or both of a plant protection product—
  - (i) the holder of any approval, authorisation or permit relating to that plant protection product; or
  - (ii) the owner of the plant protection product; or
  - (iii) any other person appearing to the authorised person to be in charge of it; and
- (b) in relation to the seizure, disposal or both of a treated item—
  - (i) any person appearing to the authorised person to be the owner of that treated item; or
  - (ii) the person appearing to the authorised person to be in charge of that treated item.

**Enforcement notices**

7.—(1) If an authorised person is of the opinion that a person—

- (a) is committing an offence under regulation 24 by contravening or failing to comply with any paragraph of regulations 8 to 17 or regulation 31; or
- (b) has committed such an offence in circumstances that make it likely that the offence will be repeated,

he or she may serve on that person a notice that he or she is of that opinion, specifying the offence as to which he or she is of that opinion and directing them to take either of the steps set out in sub-paragraph (2).

(2) A notice under sub-paragraph (1) may direct—

- (a) that any premises on or in which it appears that the offence was being committed or anything which is on or in them, shall be left undisturbed (whether generally or in particular respects) for as long as it appears to be reasonably necessary; or
- (b) that specific remedial or preventative measures shall be taken.

(3) If an authorised person is of the opinion that a person is committing, or is likely to commit, an offence under regulation 24 by contravening or failing to comply with any paragraph of regulations 8 to 17, or regulation 31 he or she may serve on that person a notice—

- (a) stating that opinion;
- (b) specifying why he or she is of that opinion; and
- (c) requiring that person to act in accordance with these Regulations or prohibiting that person from acting in contravention of these Regulations.

(4) A notice served under sub-paragraph (1) or (3) must be in writing and must give a time limit for compliance with the notice.

(5) An authorised person may withdraw a notice served under sub-paragraph (1) or (3) at any time.

(6) An authorised person may serve a person with a notice under sub-paragraph (1) or (3) even if a previous notice served on that person has been withdrawn.

**SCHEDULE 4**

Regulation 28

**Service of documents**

1. The provisions of this Schedule apply to the service of a notice or requirement in writing under these Regulations.

2. A notice or requirement may be served on, or given to, a person by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address; or
- (c) sending it by post or electronic means to that person’s proper address.

3. In the case of a body corporate, a notice or requirement may be served on, or given to, a director of that body.

4. In the case of a partnership, a notice or requirement may be served on, or given to, a partner or a person having control or management of the partnership business.

5. If a person to be served with, or given, a notice or requirement has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.

6. For the purposes of this Schedule, "proper address" means—

(a) in the case of a body corporate or its director—

(i) the registered or principal office of that body; or

(ii) the email address of the secretary or clerk of that body;

(b) in the case of a partnership, a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or a person having that control or management;

(c) in any other case, a person's last known address, which includes an email address.

7. In this Schedule, "partnership" includes a Scottish partnership.

## SCHEDULE 5

Regulation 32(2)

### Amendments

<i>Regulations to be amended</i>	<i>Regulation or Schedule to be amended</i>	<i>Amendments to be made</i>
The Plant Protection Products Regulations (Northern Ireland) 2011(a)	Regulation 2	After the definition of "the Department" insert— "premises" includes any place and, in particular, includes— (a) any vehicle, vessel, aircraft, hovercraft or marine structure; and (b) any tent or moveable structure;
	Schedule 1 paragraph 1(1)	For the word "land" substitute— "premises (except any premises used wholly or mainly as a private dwelling)". For the words "stored on it" substitute— "stored on or in them or transported or applied by means of them".
	Schedule 1 paragraph 1(2) and 1(3)	Omit.
	Schedule 1 paragraph 1	Sub-paragraph (4) of that

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(a) S.R.(NI) 2011 No 295 amended by S.R.(NI) 2012 No 12.

Schedule 1 paragraph 1	Schedule is renumbered as sub-paragraph (2). Sub-paragraph (5) of that Schedule is renumbered as sub-paragraph (3).
Schedule 1 paragraph 1(3) as renumbered	For the word “land” substitute— “premises”.
Schedule 1 paragraph 2(1)	Substitute— “(1) A lay magistrate may issue a warrant permitting an authorised person to enter any premises if necessary by reasonable force for the purposes of the enforcement of these Regulations if satisfied that the authorised person has reasonable grounds for requiring entry and any of the conditions set out in sub-paragraph 2(1A) are satisfied.”.
Schedule 1 paragraph 2	After paragraph 2(1) insert— (1A) The conditions referred to in paragraph 2(1) are that— (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier; (b) asking for admission, or the giving of such a notice, would defeat the object of the entry; (c) the case is one of urgency; or (d) the premises are unoccupied or the occupier is temporarily absent.
Schedule 1 paragraph 2(3)	Substitute— “(3) An application for a warrant under paragraph 2(1), where the condition satisfied is set out at paragraph 2(1A)(a), must be made on notice and on sworn complaint in writing and, where the condition satisfied is set out in paragraph 2(1A)(b), (c) or (d), must be made without notice on sworn complaint in writing.”
Schedule 1 paragraph 2(5)(d)	Substitute— “the address of the premises to be entered and searched; and”.
Schedule 1 paragraph 3(2)	For the words “private

	dwelling which is” substitute— “premises”.
Schedule 1 paragraph 3(3), 3(4) and 3(9)	Each time the words “private dwelling” appear, substitute— “premises”.
Schedule 1 paragraph 3(3) and 3(4)	Each time the word “land” appears, substitute— “premises”.
Schedule 1 paragraph 4(1)	Substitute— “(1) An authorised person exercising powers of entry pursuant to paragraph 1(1), or in accordance with a warrant granted under paragraph 2(1), may— (a) search for any item, if necessary using reasonable force; (b) open or examine, or both, anything that is on, attached to or otherwise forms part of the premises, if necessary using reasonable force; (c) take with him or her any persons and equipment or materials he or she considers necessary for the enforcement of these Regulations; (d) open any container, if necessary using reasonable force; (e) carry out any searches, inspections, measurements and tests; (f) take samples; (g) have access to, and inspect and copy any documents, books or records (in whatever form they are held) which the authorised person has reason to believe may be relevant in connection with the enforcement of these Regulations and remove them to enable them to be copied; (h) photograph or copy anything which the authorised person has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations; and (i) seize any computers and associated equipment for the purpose of copying documents

		provided that they are returned as soon as practicable.”
	Schedule 1 paragraph 4(2)	For “paragraph 4(1)(a)” substitute—
	Schedule 1 paragraph 4(3)	“paragraph 4(1)(c)”.
	Schedule 1 paragraph 4(4)	For “paragraph 4(1)(d)” substitute—
	Schedule 1 paragraph 4(4)	“paragraph 4(1)(f)”.
	Schedule 1 paragraph 5	For “paragraph 4(1)(e), (f) or (g)” substitute—
	Schedule 1 paragraph 8(2)(a)	“paragraph 4(1)(g), (h) or (i)”.
	Schedule 1 paragraph 5	Omit.
	Schedule 1 paragraph 8(2)(a)	For the words “land, vehicle, vessel, aircraft, hovercraft or marine structure” substitute—
		“premises”.
The Plant Protection Products Regulations 2011(a)	Regulation 2(1)	After the definition of “authorised person” insert—
		“premises” includes any place and, in particular, includes—
		(a) any vehicle, vessel, aircraft, hovercraft or marine structure; and
		(b) any tent or moveable structure;.
	Regulation 6	Regulation 6 is renumbered as paragraph (1) of that regulation.
		After paragraph (1) as so renumbered insert—
		“(2) The Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of offences under these Regulations in so far as those functions relate to offences committed in England.”.
	Schedule 1 paragraph 1(1)	For the word “land” substitute—
		“premises (except any premises used wholly or mainly as a private dwelling)”
		For the words “stored on it” insert—
		“stored on or in them or transported on or applied by means of them”.
	Schedule 1 paragraph 1(2) and 1(3)	Omit.
	Schedule 1 paragraph 1	Sub-paragraph (4) of that Schedule is renumbered as

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(a) S.I. 2011/2131.

Schedule 1 paragraph 1	sub-paragraph (2). Sub-paragraph (5) of that Schedule is renumbered as sub-paragraph (3).
Schedule 1 paragraph 1(3) as renumbered	For the word “land” substitute— “premises”.
Schedule 1 paragraph 2(1)	Substitute— “(1) A justice of the peace in England and Wales, or a sheriff, stipendiary magistrate or justice of the peace in Scotland, may issue a warrant permitting an authorised person to enter any premises if necessary by reasonable force, for the purposes of the enforcement of these Regulations if satisfied that the authorised person has reasonable grounds for requiring entry and any of the conditions set out in paragraph 2(1A) are satisfied.”. After paragraph 2(1) insert— “(1A) The conditions referred to in sub-paragraph (1) are that— (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier; (b) asking for admission, or the giving of such a notice, would defeat the object of the entry; (c) the case is one of urgency; or (d) the premises are unoccupied or the occupier is temporarily absent.”.
Schedule 1 paragraph 2(4)	Substitute— “(4) An application for a warrant under paragraph 2(1), where the condition satisfied is set out at paragraph 2(1A)(a), must be made on notice and, where the condition satisfied is set out in paragraph 2(1A)(b), (c) or (d), must be made without notice.”
Schedule 1 paragraph 2(7)(d)	Substitute— “the address of the premises to be entered and searched; and”.

Schedule 1 paragraph 3(2)	For the words “private dwelling which is” substitute— “premises”
Schedule 1 paragraph 3(3), 3(4) and 3(10)	Each time the words “private dwelling” appear, substitute— “premises”.
Schedule 1 paragraph 3(3) and 3(4)	Each time the word “land” appears, substitute— “premises”.
Schedule 1 paragraph 4(1)	Substitute— “(1) An authorised person exercising powers of entry pursuant to paragraph 1(1), or in accordance with a warrant granted under paragraph 2(1), may— (a) search for any item, if necessary using reasonable force; (b) open or examine, or both, anything that is on, attached to or otherwise forms part of the premises, if necessary using reasonable force; (c) take with him or her any persons and equipment or materials he or she considers necessary for the enforcement of these Regulations; (d) open any container, if necessary using reasonable force; (e) carry out any searches, inspections, measurements and tests; (f) take samples; (g) have access to, and inspect and copy any documents, books or records (in whatever form they are held) which the authorised person has reason to believe may be relevant in connection with the enforcement of these Regulations and remove them to enable them to be copied; (h) photograph or copy anything which the authorised person has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations; and (i) seize any computers and associated equipment for the

	purpose of copying documents provided that they are returned as soon as practicable.”
Schedule 1 paragraph 4(2)	For “paragraph 4(1)(a)” substitute—
	“paragraph 4(1)(c)”.
Schedule 1 paragraph 4(3)	For “paragraph 4(1)(d)” substitute—
	“paragraph 4(1)(f)”.
Schedule 1 paragraph 4(4)	For “paragraph 4(1)(e), (f) or (g)” substitute—
	“paragraph 4(1)(g), (h) or (i)”.
Schedule 1 paragraph 5	Omit.
Schedule 1 paragraph 8(1)(a) and 8(3)	For the words “under regulations 9 to 19” substitute—
	“under regulation 23 by contravening or failing to comply with any paragraph of regulations 9 to 19”.
Schedule 1 paragraph 8(1)(b)	For the word “unlikely” substitute —
	“likely”.
Schedule 1 paragraph 8(2)(a)	For the words “land, vehicle, vessel, aircraft, hovercraft or marine structure” substitute—
	“premises”.

## EXPLANATORY NOTE

*(This note is not part of the Regulation)*

These Regulations, as respects the United Kingdom, transpose Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides (OJ No L309, 24.11.2009, p.71)(“the Directive”) and provide enforcement provisions.

The Directive applies to pesticides that are plant protection products as defined in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ No L309, 24.11.2009, p.1)(“PPPs”) and requires a common legal framework to be established for achieving a sustainable use of pesticides, taking account of precautionary and preventive approaches.

The terms and expressions used in these Regulations are defined in regulation 2, including a definition of “the appropriate United Kingdom competent authority” (“UKCA”).

Regulation 3 requires the Secretary of State to review the operation and effect of these Regulations as they have effect in relation to England and Wales and to publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations, as they have effect in relation to England and Wales, should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 4 requires the Secretary of State, the Scottish Ministers and the Department to adopt a National Action Plan and to revise it as necessary.

Regulations 5 and 6 require the UKCA to designate the bodies to implement certification systems for training and the bodies responsible for implementing inspection systems for PPP application equipment respectively. The former provides for the withdrawal of certificates and deems training bodies as designated. The latter also deals with the registration of inspectors and certification of equipment.

Regulation 7 provides that the UKCA is the competent authority in relation aerial spraying and that the Civil Aviation Authority is the competent authority for certifying the operator responsible for providing aerial spray applications.

Regulation 8 prohibits the use of PPPs authorised for professional use unless the user holds a specified certificate or works under supervision except for those who are not required to hold certificates of competence by existing legislation. This exemption will not be available after 25<sup>th</sup> November 2015.

Regulation 9 requires distributors who sell to end-users to have sufficient staff who hold specified certificates to provide information at the time of sale. Micro-distributors are excluded from this requirement. It also prohibits purchase for use by a person who does not hold a certificate or work under supervision.

Regulation 10 provides that PPPs may only be used if all reasonable precautions are taken to protect human health and the environment, if the application is confined to the target area and, when used in specified places, if use is minimised. Preference must be given to certain products in specified situations (regulation 10(3) and the UKCA must include a requirement for buffer zones in PPP authorisation where necessary.

Regulations 11 to 14 deal with the inspection of PPP application equipment.

Regulations 15 and 16 prohibit aerial spraying, unless permitted by an aerial spraying permit, and require the pilot and permit holder to comply with certain conditions. Requirements are imposed regarding the provision of information when applying for an aerial permit.

Regulation 17 requires reasonable precautions to be taken in relation to the storing, handling and mixing of PPPs and related activities.

Regulation 18 enables the UKCA to issue a code of practice and Regulations 19 to 23 set out enforcement provisions.

Regulation 24 creates a criminal offence of contravention or failure to comply with regulations 8 to 17, 22, 23 and 31. Regulation 25 makes provision in relation to offence by bodies corporate and Regulation 26 provides, in relation to certain regulations, the defence of having taken all reasonable precautions and having exercised due diligence to avoid the commission of an offence.

Regulation 27 sets out the penalties for offences under these Regulations and regulation 28 gives effect to Schedule 4 (service of documents).

Regulation 29 provides that the Scottish Ministers may make agency agreements with the Secretary of State and Regulation 30 describes the circumstances in which an authorised person may perform his or her functions in relation to land in which there is a Crown or Duchy interest.

Regulation 31 sets out the transitional provisions and regulation 32 provides for the amendments set out in Schedule 6 making changes to enforcement provisions and revokes the Plant Protection Products (Basic Condition) Regulations 1997 and the Plant Protection Products (Basic Condition) Regulation (Northern Ireland) 1997.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available publically on the Impact Assessment Library <http://www.ialibrary.bis.gov.uk/> and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).