

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Public Bodies (Abolition of the Advisory Committee on Pesticides) Order 2015 was laid before Parliament on 15 December 2014 and before the Assembly on 16 December 2014. The order can be found at:
<http://www.legislation.gov.uk/ukdsi/2015/9780111125656/contents>
3. Section 9(6) of the Public Bodies Act 2011 requires the consent of the Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the Assembly if it were contained in an Act of the National Assembly.

Summary of the Order and its objective

4. The objective of this Order is to abolish the Advisory Committee on Pesticides (the “ACP”) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP(NI)), both committees are jointly referred to in this document as the ACPs. The ACPs were established under section 16(7) of the Food and Environment Protection Act 1985 (FEPA) as statutory non-departmental public bodies (NDPBs). Following abolition, the intention is to replace the ACPs with a non-statutory expert committee of the Department for Environment, Food and Rural Affairs (Defra).
5. This Order also makes repeals and revocations associated with the abolition of the ACPs, including the repeal of sections 16(7) and 16(9) of FEPA. Section 16(7) enables the establishment of a committee to provide advice on any matters relating to the control of pests in furthering the general purposes of Part III of FEPA. Section 16(9) imposes a duty to consult the committee as described in paragraph 8 below.
6. The ACPs were established under Section 16(7) of FEPA to advise the Welsh Ministers, the Secretary of State and others on any matters

relating to the control of pests in furthering the general purposes of Part III of FEPA.

7. The general purposes are set out in section 16(1) of FEPA which provides that Part III of that Act shall have effect:
 - a. with a view to the continuous development of means:
 - i. to protect the health of human beings, creatures and plants;
 - ii. to safeguard the environment; and
 - iii. to secure safe, efficient and humane methods of controlling pests.
 - b. with a view to making information about pesticides available to the public.
8. Section 16(9) of FEPA requires that the Welsh Ministers and others consult the ACPs as to the regulations which they contemplate making; the approvals of pesticides they contemplate giving, revoking or suspending; and the conditions to which they contemplate making approvals subject.
9. This Order extends to Wales, England, Scotland and Northern Ireland.

Provision to be made by The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 for which consent is sought

10. This draft Order abolishes the ACP and the ACP (NI) established under FEPA. It makes repeals and revocations associated with the abolition including those described at paragraph 5 above.
11. It is the view of the Welsh Government that the provisions described in paragraph (10) above falls within the legislative competence of the National Assembly for Wales in relation to:
 - a. agriculture, animal health and welfare and plant health pursuant to (Subject 1 Agriculture, forestry, animals, plant and rural development) Schedule 7 of the Government of Wales Act 2006 (GoWA);
 - b. environmental protection, including pollution, nuisances and hazardous substances pursuant to (Subject 6 Environment) Schedule 7 of GoWA; and
 - c. promotion of health, prevention, treatment and alleviation of disease, illness, disability and mental disorder pursuant to (Subject 9 Health and health services) Schedule 7 of GoWA.
12. It is the view of Welsh Government that taking these subjects together that it is within the competence of the National Assembly of Wales to establish (or enable the establishment of) a committee that advises on the control of pests within the context of human, animal and plant health; safeguarding the environment; and securing safe efficient and

humane methods of controlling pests. To the extent that the National Assembly has the competence to create such a body, it would also have the competence to abolish it and make associated repeals and revocations.

Why is it appropriate for the Order to make this provision

13. The Welsh Government considers that this Order represents the most appropriate and proportionate legislative vehicle to deal with the abolition of the ACP which covers Wales, England and Scotland, and the ACP(NI); which is also being abolished in the Order.
14. The abolition of the ACPs as statutory NDPBs is as an outcome of the UK Government's 2010 review of public bodies. Since the ACPs were established the regulatory system for pesticides has changed considerably. In the 1980s, all the decisions on the approval of pesticides were taken by UK Ministers following a scientific assessment of risks to people and the environment. This was then a new system under FEPA and required high levels of expertise to establish precedents and build a robust and consistent regulatory system. A team within the then Ministry of Agriculture, Fisheries and Food was set up to project manage the work and to carry out the technical assessment. In these early days, the expertise of the ACPs was central to carrying out all the necessary risk assessments.
15. Since the 1980s the in house Government expertise within the Health and Safety Executive, which carries out the day to day regulatory functions on behalf of the Welsh Ministers, has developed significantly. The expertise of the ACPs is therefore now to provide an independent check and challenge rather than an integral part of the assessment as was formerly the case.
16. In addition since the 1990s decisions on the approval of active substances falling within the remit of the ACPs have increasingly been taken at European Union level under the provisions of legislation covering plant protection products. Regulation (EC) 1107/2009 (published 24 November 2009) has further harmonised the regulatory system for plant protection products.
17. These developments mean the role for the UK Regulator (the Health and Safety Executive) and for independent expert advice to support and challenge the work has changed. As a result there is less need for UK specific expert advice on UK applications for approval which is what the ACP was set up to do. There however remains a strong need for independent advice on broader risk assessment and risk management issues.
18. Therefore while it is appropriate for the ACPs to be abolished there is the intention following the abolition to establish a non-statutory scientific committee as a successor body which will provide expert,

independent and impartial advice to Ministers, including the Welsh Ministers. The new committee will be more efficient because currently the requirement to consult the ACPs under FEPA is very broad. The proposed expert committee would be able to offer advice on any matter within its remit, but in contrast to the ACPs would not routinely be asked for advice to support decisions which do not raise new or contentious issues. This will enable the new committee to devote more time to the most important questions.

19. The successor body will also be for the public benefit and in the interests of ensuring Ministers, including Welsh Ministers and others continue to receive expert, impartial and independent advice against a changing regulatory landscape.
20. In addition, the new non-statutory body will be more flexible and nimble as its remit can be adapted through changes to its terms of reference.

Financial implications

21. The ACPs are funded entirely by Defra. The new non-statutory scientific committee will continue to be funded by Defra, so following the reconstitution there will be no financial implications for Wales.

Rebecca Evans AM
Deputy Minister for Farming and Food
December 2014