

## EXECUTIVE NOTE

### **THE PESTICIDES (MAXIMUM RESIDUE LEVELS) (SCOTLAND) REGULATIONS 2008 (SSI 2008/342)**

1. The Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 (“the 2008 Regulations”) are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, and are subject to negative Parliamentary procedure.

#### **Policy Objective**

2. The Regulations contain provisions necessary to supplement EC Regulation 396/2005 on maximum residue levels (“MRLs”) of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (“EC Regulation 396/2005”). EC Regulation 396/2005 establishes a new European framework for the regulation of pesticide residues in food throughout the EC. The maximum permissible level of pesticide residues is established for a large number of active substances (which are the main ingredients of pesticides) in relation to a wide range of commodities (including crops, foodstuffs and animal feeding stuffs).

3. The Regulations allow the new unified MRL regime to be enforced in Scotland. Key provisions include:-

- identification of the Scottish Ministers as the designated national authority for the purposes of Article 38 of EC Regulation 396/2005 and with the obligation to exercise the functions of the member State under that Regulation, as regards Scotland.
- specification of offences, including in relation to non-compliance with MRLs set under EC Regulation 396/2005 and obstruction, and provision in relation to offences by corporate bodies.
- prohibition of processing and mixing of produce in contravention of EC Regulation 396/2005.
- description of the powers of inspectors.
- specification of penalties for persons guilty of offences under the 2008 Regulations.
- revocation of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005, including all Regulations amending those Regulations.

4. Similar Regulations are being prepared for England and Wales, and for Northern Ireland.

#### **Policy Background**

5. All pesticides have to be approved before they are able to be stored, marketed or used.

6. In practice the use of approved pesticides is likely to lead to small amounts of pesticides (residues) on food. Residues are also likely to end up in the environment and in drinking water. When a pesticide is approved, it is given conditions of use which are written on the label. These conditions are intended to ensure that any pesticide residues in food will be below levels which could cause harm. Legal limits on residues in food are also set. These are called maximum residue levels (MRLs).

7. MRLs are established on the basis of the highest residues expected when a pesticide product is applied in accordance with approved conditions of use and Good Agricultural Practice. It is important that residue levels do not pose unacceptable risks for consumers.

8. MRLs are not safety limits. They are always set below, often far below levels that would cause harm. Two-thirds of our food – as monitored in official surveillance programmes – is free from pesticide residues. In Scotland, the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2005 (SSI 2005/599) (“the 2005 Regulations”) contain provision to prohibit the circulation of products which contain more than specified amounts of pesticide residue.

9. The main role of MRLs is in relation to the regulation of trade in treated food.

10. MRLs are set for each pesticide in use, in relation to a wide range of fruit and vegetables, cereals and animal products. They are measured in thousandths of a gram per kilogram of product.

11. Prior to EC Regulation 396/2005, various MRLs operated across the EU, with MRLs being set in terms of a number of sources, which resulted in a lack of uniformity across member States. EC Regulation 396/2005 establishes a system for setting common MRLs across the whole Community, and introduces MRLs for a wide range of pesticides in current use within the EC, against a huge variety of foodstuffs. For the first time, there will be a single comprehensive set of MRLs which will apply throughout the European Community.

12. The existing regime to regulate MRLs in Scotland is contained in the 2005 Regulations. These Regulations transpose the MRLs set in the EC. The 2005 Regulations required frequent amendment as revised or new MRLs were set. The need for frequent amendment of domestic transposing instruments will disappear under the directly applicable EC Regulation 396/2005.

13. EC Regulation 396/2005 contains provision on the main controls and procedures which will now govern MRLs across Europe. The 2008 Regulations supplement these general rules, by prescribing for Scotland provisions to secure compliance with EC Regulation 396/2005, plus associated provisions relating to such matters as the powers of inspectors, offences and penalties. These provisions largely mirror those which are currently in force under the 2005 Regulations, which apply certain provisions of the Food and Environment Protection Act 1985. The 2005 Regulations, and their associated amending instruments, are revoked by the 2008 Regulations.

## **Administration**

14. Pesticides are a devolved matter. However, in practice, the day to day administration of the overall pesticides approval system is undertaken by the Pesticides Safety Directorate (PSD), which is an Executive Agency of the Health and Safety Executive and which operates on behalf of the Scottish Ministers under an Agency Arrangement. The independent Pesticide Residues Committee (PRC) monitors residues in foodstuffs in the UK, and advises Ministers and PSD on the planning of surveillance programmes and the evaluation of the

results. The PRC adopts a risk-based approach to monitoring, targeting those foodstuffs most likely to contain residues. Science and Advice for Scottish Agriculture (SASA) is one of the laboratories used by the PRC in this monitoring process. Where evidence emerges of any product exceeding the MRL for a substance, local authority inspectors have powers under the 2005 Regulations to seize and dispose of that product.

15. These administrative processes are not being changed by the 2008 Regulations.

### **Discussion and timing**

16. EC Regulation 396/2005 came into force on 1 September 2008, and we are taking the earliest opportunity to bring in the supplementing measures in these Regulations.

17. The 2008 Regulations are a “bolt-on” to the provisions in EC Regulation 396/2005. Their main purpose is to enforce the provisions of that Regulation in Scotland and to ensure that, under the new domestic MRL regime, persons appointed as inspectors continue to have appropriate powers of inspection, etc. Schedule 1 to the 2008 Regulations sets out these powers, which largely replicate those powers found in the 2005 Regulations (which apply the relevant enforcement provisions of the Food and Environment Protection Act 1985).

18. The powers of inspectors set out in Schedule 1 to the 2008 Regulations include powers of entry, powers to carry out searches and to take samples, and powers to seize and dispose of products containing a quantity of pesticide residue greater than the relevant MRL. These powers largely replicate those which are currently available under the 2005 Regulations.

19. Paragraph 2(1) (h) of Schedule 1 to the 2008 Regulations, in particular, allows an inspector to seize any computers and associated documents. The need for such a power is because of the increase in the electronic storage of information. Sub-paragraph (1) (e) of paragraph 2 of Schedule 1 to the 2008 Regulations allows inspectors to have access to, inspect, and copy any books, documents or records relating to the 2008 Regulations, and paragraph 2(1) (h) of Schedule 1 complements this power by enabling computers to be seized for the purpose of copying documents, as long as they are returned as soon as possible. It is anticipated that this seizure power will only be used in the most extreme cases, where there was reasonable belief that such action was necessary in order to access relevant documents which could not be accessed in any other way. Paragraph 3 of Schedule 1 to the 2008 Regulations allows an inspector to use reasonable force in the exercise of their functions. This power replicates the powers currently available to inspectors in terms of section 19 of, and Schedule 2 to the Food and Environment Protection Act 1985.

20. In summary, we consider that the powers available to inspectors in Schedule 1 to the 2008 Regulations are necessary, proportionate and reasonable to enforce EC Regulation 396/2005.

21. The 2008 Regulations will apply to any home-grown or imported produce put into circulation in Scotland. They will be of most interest to commercial trade, distribution and retail interests and to those bodies carrying out inspection and enforcement activities. Members of the public are most likely to be interested in the MRLs set under EC Regulation 396/2005. A database including all the levels set by EC Regulation 396/2005 has been made

available by PSD to coincide with the coming into force of that Regulation on 1 September 2008. This information is provided in an easy to read format on the PSD website :-  
<https://secure.pesticides.gov.uk/MRLs/>

22. The 2008 Regulations are not considered to be politically sensitive. The regime in relation to the setting of MRLs and associated enforcement provisions has been in place for some time. The 2008 Regulations continue the established enforcement provisions.

23. A copy of EC Regulation 396/2005, as amended, together with all available Annexes to it, is available in the Scottish Parliament Information Centre (SPICe).

### **Consultation and financial effects**

24. In 2003, PSD undertook a consultation on a GB basis in relation to an EC proposal to amend the Community's procedures for setting MRLs. Responses indicated that compliance costs were virtually unchanged since the previous assessment made in 1999.

25. A Regulatory Impact Assessment was prepared in 2005 when the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations were last consolidated and provides a basis for establishing the impact of amendments to the principal Regulations. The financial data contained in the RIA relates to the whole cost which pesticide companies bear in providing data necessary for a pesticide product to be authorised for marketing and not simply the average cost of establishing individual maximum residue levels.

26. The 2008 Regulations have no additional financial effects on the Scottish Government, local government or business.