

RESPONSE TO THE CONSULTATION ON THE IMPLEMENTATION OF EU PESTICIDES LEGISLATION

Introduction

Water UK represents all the UK water and waste water service suppliers. Our members are totally committed to supplying drinking water of the highest quality that is fully compliant with stringent EU and UK drinking water standards, including that for pesticides. To support this objective they are dependant on others to strictly protect the catchments from which they abstract to ensure that raw water pollution does not compromise their ability to cost effectively supply high quality drinking water.

For many years one of the key pollutants impacting water suppliers has been pesticides. A small number of pesticides, mainly herbicides and molluscicides, are regularly detected in raw water, which can peak to high levels during certain periods of the year. The main impact has been on surface catchments but in some cases groundwater catchments are also affected. The primary source of such problem pesticides is agriculture both arable and livestock. However, in some catchments very poor practice by local authorities using pesticides for amenity weed control has also led to significant pollution.

This in turn has necessitated significant capital investment by water companies and ongoing major operating cost to install complex treatment to remove pesticides before supply to customers. Nevertheless, even with such expensive state of the art treatment, in some catchments some pesticides, particularly when peak levels occur, continue to pose a real risk to compliance with treated water standards. This has been confirmed by a recent research project by the Environment Agency which has clearly identified that the major risk of non compliance with Water Framework Directive requirements for pesticides is the impact on water supply abstractions (article 7), not ecological impact. Thus we do not agree with the view expressed in paragraph 5.6 of the consultation that “The government believes that, provided approved pesticides are applied correctly, no concerns should arise from their use.”

The requirements of the Water Framework Directive are now closely and specifically aligned with the new EU pesticides legislation and thus it is important that this is taken fully into account in transposing this legislation into the UK. In particular we emphasise the requirements of article 11 of the new Sustainable Use Directive (SUD):

Specific measures to protect the aquatic environment and drinking water

1. Member States shall ensure that appropriate measures to protect the aquatic environment and drinking water supplies from the impact of pesticides are adopted. Those measures shall support and be compatible with relevant provisions of Directive 2000/60/EC and Regulation (EC) No 1107/2009.

We have carefully followed the development of the EU pesticide legislation in Brussels and particularly support the new SUD, which along with the sister legislation on PPP Regulation does, if properly implemented, present a real opportunity to address a long standing problem of raw water pollution. We therefore warmly welcome this opportunity to comment on the proposed implementation in the UK and hope that our response is helpful and constructive.

Summary of main points

Our members have been actively working for many years with a wide range of catchment stakeholders to develop and promote improved practice to reduce raw water pollution from pesticides, as well as other problem parameters.

We have been a strong and active supporter of the Pesticides Voluntary Initiative (VI) from its inception and as a matter of principle support the use of voluntary means in the first instance as the best way to address catchment pollution problems. Our members have also worked directly with the VI in a number of pilot catchments to specifically try and address the problems of diffuse pollution from pesticides. Through this work we have learned that although a solely voluntary approach can work well in some catchments, in other catchments it has failed to deliver the required improvement despite huge effort over many years.

Thus we believe that the time is now right for a flexible but more targeted approach which combines reinforced voluntary action with additional legislative action in those catchments where a voluntary approach does not deliver the required improvement in water quality within a defined timescale. The appropriate time scale within which voluntary action can be allowed to demonstrate success will depend on local circumstances but we think that this should be no more than a small number of years and even less where the risk to water treatment is highest.

In parallel we would also support more innovative use by Government of fiscal encouragement to adoption of best practice by farmers (e.g. through

agri-environment schemes or other means), targeted particularly at those catchments at high risk of WFD non compliance with pesticide objectives.

Although we support the need for more regulatory action to complement other approaches, we also fully recognise the importance of effective crop protection for sustainable agricultural production. However we believe that the existing “one size fits all” approach to pesticide regulation and control benefits neither the water sector nor agriculture. In future a much more catchment focussed approach which seeks to properly target the needs of water supply protection will be necessary. This can take into account the differing needs and sensitivities to pesticides of water treatment plant in different catchments which in turn means that the necessary change in pesticide use practice will also vary between catchments. For example, in some areas where there is no or very limited pesticide treatment removal capacity for certain pesticides then the target for catchment protection at the point of abstraction will be the same as the drinking water standard (i.e. maximum below 0.1ug/l). In other catchments the water supplier may be willing to accept a higher target for some pesticides at the point of abstraction, where this is compatible with the cost effective operation of the installed treatment capacity. We believe this catchment centred approach is fully compatible, and indeed is explicitly endorsed within the requirements of the SUD for example article 11.2 c/d:

The measures provided in paragraph 1 shall include:

(c) use of mitigation measures which minimise the risk of off-site pollution caused by spray drift, drain-flow and run-off. These shall include the establishment of appropriately-sized buffer zones for the protection of non-target aquatic organisms and safeguard zones for surface and groundwater used for the abstraction of drinking water, where pesticides must not be used or stored;

(d) reducing as far as possible or eliminating applications on or along roads, railway lines, very permeable surfaces or other infrastructure close to surface water or groundwater or on sealed surfaces with a high risk of run-off into surface water or sewage systems.

Our work with other stakeholders has clearly identified the importance to effective pollution control of understanding the different pathways by which pesticides can enter water. The three main routes are broadly:

- Poor practice in handling, mixing and application, equipment cleaning and disposal of excess pesticide.;

- Overland runoff after rain, often associated with sediment loss;
- Drainflow losses, particularly associated with some of the most mobile and commonly detected pesticides in water.

All three routes are important under different circumstances and all need to be addressed. We believe that existing voluntary best practice measures, if fully adopted by users, could substantially mitigate losses via the first two routes. However, securing voluntary best practice to mitigate drainflow losses is much more difficult and challenging particularly since this may be the major route for some of the pesticides particularly impacting water abstraction.

Our practical catchment experience has highlighted the vital importance of all pesticide users in the catchment fully adopting the necessary change in practice at all times and under all weather conditions. The extent to which this currently occurs is very variable. Thus where voluntary action on its own is insufficient to achieve the necessary water quality improvement, the type of legislative response necessary to promote improved catchment protection will inevitably need to be flexible enough to deal with the various circumstances in different catchments and consider a range of more innovative local solutions. The precise options will vary from catchment to catchment but could include:

- Statutory registration of users of high risk pesticides in at risk catchments to support specialist training and advice;
- Tighter controls over timing of application in relation to weather and soil conditions;
- Innovative approaches to drainflow interception and in situ treatment of field run-off;
- Much more carefully restricted use of high risk actives in terms of:
 - application rates
 - catchment or area load limits
 - non-use in some critical areas of the catchment
 - field by field risk assessment basis;
- Much tighter controls over contractor qualification and specification of amenity herbicide use by local authorities.

It is stressed that such measures would only be necessary in those catchments at particular risk of pollution not universally. Our members would be very keen to build on the existing partnerships with catchment users, farmers, advisors, and regulators in those high risk catchments to secure solutions which better protect water supply abstractions whilst allowing the continuation of profitable and sustainable land use within the catchment.

Responses to specific questions

We have as requested set out some more specific responses to individual questions where these are relevant to our area of interest

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

We believe that the NAP should provide a comprehensive framework for technical support and coordination within which locally based catchment solutions can be pursued.

Working with the Environment Agencies it also has a role to monitor progress towards WFD and other water quality objectives relating to pesticides in order that additional regulatory or other action can be considered when voluntary measures do not secure the objectives within a reasonable timeframe.

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

See above. Additionally In view of the stringent drinking water standards for pesticides that are set in European and transposing national legislation, the inability of current water treatment processes to remove pesticides should also be a criterion that is used to identify pesticides of concern. For example, existing water treatment processes do not effectively remove metaldehyde (used in slug pellets) from drinking water supplies, so we would like the UK to use the implementation of the SUD as a way to reduce the use of this pesticide to levels which are compatible with water protection.

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

We believe this is unhelpful and unnecessary. It is the reduction in risk that is important; reduction of pesticide use per se does not necessarily secure this objective.

Article 5 training and certification requirements

4. What is your preferred approach and why?

We broadly support option 2. However we know that bad practice by only a small number of pesticides users in a catchment can nevertheless result in significant water pollution. This applies to small scale livestock users as much if not more than large arable users. Thus in our view all professional users of pesticides, however limited or infrequent, must be

covered by some form of compulsory training and certification although the level of training and assessment must be proportionate.

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

See above

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

Yes, through the use of CPD schemes

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

Normal procedures applying to other similar situations should occur. However if there is a blatant and deliberate disregard for well established best practice then this could be considered for automatic withdrawal

Article 6 sales requirements

8. What is your preferred approach and why?

We support option 2

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

No

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

No comment

Questions on Article 7 information and awareness-raising

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

No comment

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

No comment

Questions on Article 8 equipment testing

13. What is your preferred approach and why?

We support option 2 which maintains a higher level of control than in the directive

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

Yes in principle but we believe that there should be strong incentives provided for users to test their equipment using a self assessment approach

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

Where the use of any application equipment poses a risk to water they should be subject to proportionate controls. In particular some granular applicators for slug pellet application are known to present a real risk of water pollution. We believe that these should certainly be included in the inspection requirements

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

We support the NSTS scheme

Questions on Article 9 aerial applications

17. What is your preferred approach and why?

We understand that in certain situations aerial application of pesticides may be necessary, but we support the general spirit of the directive that this should be seen as only being used where absolutely necessary and where no realistic alternative exists. In particular for bracken spraying there are clear risks to pollution of both public and private water supplies and thus we believe that any change to the rules to the granting of permission be modified to reflect this. For example the potential impact of aerial spraying on drinking water protected areas should be specifically included as part of any risk assessment before the granting of a licence to spray. Water UK members would be very happy to work further with regulatory agencies on the details of this.

Questions on Article 11 water protection

18. What is your preferred approach and why?

This is a key aspect of transposition since it is clear that at present there are a substantial number of water bodies at risk of non compliance with the WFD requirements for pesticides, particularly in relation to article 7 and drinking water protected areas.

Our preferred approach is a combination of options 2 and 3 depending on the local situation. This is described more fully in the introduction to our response but in summary:

- *We believe that the time is now right for a flexible but more targeted approach in water supply catchments which combine reinforced voluntary action with additional legislative action in those catchments where a voluntary approach does not deliver the required improvement in water quality within a defined timescale.*
- *The appropriate time scale within which voluntary action can be allowed to demonstrate success will depend on local circumstances but we think that this should be no more than a small number of years and even less where the risk to water treatment is highest.*
- *Where voluntary action on its own is insufficient to achieve the necessary water quality improvement, the type of legislative response necessary to promote improved catchment protection will inevitably need to be flexible enough to deal with the various circumstances in different catchments and consider a range of more innovative local solutions. The precise options will vary from catchment to catchment but could include:*
 - *Statutory registration of users of high risk pesticides in at risk catchments to support specialist training and advice*
 - *Tighter controls over timing of application in relation to weather and soil conditions*
 - *Innovative approaches to drainflow interception and in situ treatment of field run-off*
 - *Much more carefully restricted use of high risk actives in terms of:*
 - *application rates*
 - *catchment or area load limits*
 - *non-use in some critical areas of the catchment*
 - *field by field risk assessment basis*
 - *Much tighter controls over contractor qualification and specification of amenity herbicide use by local authorities*

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

For the reasons already set out we believe that it is important that powers to establish safeguard zones are taken in order to protect water supplies as required by the WFD and reinforced in the SUD. However, within the zones the measures to be taken could vary depending on the risk and be either voluntary or statutory or a mixture of both.

Government has already recently put in place in England and Wales new powers to establish “water protection zones” for any type of pollutant and these could already be used in some situations for pesticides, although their implementation is time consuming and resource intensive. Thus we believe additional powers need to be taken by CRD which allows legislative action to be taken specifically for pesticides in those catchments where WFD potential breaches are occurring and where voluntary action has not delivered sufficient improvement in water quality.

Furthermore, in relation to groundwater any safeguard zones that are established should be properly aligned with the Environment Agency’s groundwater protection regime. For example, in a recent consultation paper about risk assessments for treated sewage discharges to ground via infiltration systems, the Agency indicates that it will not permit new discharges in areas within type 1 Source Protection Zones, which have a minimum 50 metre radius around boreholes used for public drinking water supplies. Given that pesticides are likely to pose a greater risk than such treated domestic effluent, commensurate safeguards should be introduced to protect groundwaters that are used for drinking water sources from contamination by pesticides.

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

We strongly support such an approach for the reasons already explained above under Q18. Such an approach is much more flexible and would allow products to continue to be used as at present in those catchments not at high risk of WFD failure, subject to certain safeguards. However in other higher risk catchments use of these products might have to be

much more carefully controlled for example through much more restriction on application rate or timing of application.

Questions on Article 12 Protection of specific areas

21. What is your preferred approach and why?

We agree with the consultation document in that pesticide use practice in the amenity sector, particularly by local authorities, is generally much poorer than that for farming. Voluntary approaches have so far failed to be effective largely because the management of pesticide spraying contracts by local authorities has been below that which is necessary. We would therefore favour a much more proactive approach based on much stronger requirements on the procurers of weed control contracts to include for example:

- *Mandatory requirement to use only properly certificated contractors which adhere to strict standards of practice and training*
- *Much greater consideration of alternative non chemical control options in sensitive areas including those close to water supply abstraction such as already applies in the Netherlands*

Given the current experience with entirely voluntary approaches we consider that option 2 or possibly 3 might be necessary.

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

Potentially- see above

Questions on Article 13 storage, handling and waste

23. What is your preferred approach and why?

We broadly support option 2

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

Disposal of old products is expensive and can therefore create an situation where certain users might be tempted to continue to use products even though no longer approved. The recent experience of IPU detection in certain rivers well after the legal use by date confirms this.

There is thus a value in giving further consideration to take back schemes although the details would have to be carefully agreed with all relevant parties.

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

No comment

Questions on Article 14 IPM

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

In all those catchment where there is a higher risk of WFD non compliance, IPM approaches should be particularly promoted. Crops/pests which would particularly benefit include slug and snail management and OSR.

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

No comment

Questions on Article 15 indicators

28. What is your preferred approach and why?

No comment

Questions for spray notification and records disclosure:

29. What is your preferred approach and why?

For water companies, any information about what plant protection products are being used in the catchments of the rivers and reservoirs from which they abstract water would be useful: it would, for example, help to ensure that drinking water treatment and sampling programmes are appropriately targeted. Article 67 of the PPP recognises that “the drinking water industry” should be able to access this information on request from the competent authority, and we would welcome this facility.

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

No comment

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

No. Under normal transparency criteria we think that such information should be freely available for proper purposes, subject to this not being abused

32. Do you consider that organisations publishing advance spray schedules would be an effective way of increasing public information? Would your organisation be prepared to do this as a matter of routine?

No comment

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

No comment

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

No

Question on penalties

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

No comment

Question on compliance

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

No comment

Questions on funding arrangements and the impact assessments

37. What approach do you prefer and why?

No comment

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

No comment

General question on the impact assessment

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

No comment

General question about implementation

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

No