Department for Environment Food & Rural Affairs

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Testing of organic products in the UK

Consultation on draft UK guidance on the testing procedure for prohibited substances in organic products

Summary of responses

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Llywodraeth Cymru
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DOE
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This document/publication is also available on our website at: https://www.gov.uk/government/consultations/draft-uk-guidance-on-the-testing-procedure-for-prohibited-substances-in-organic-products

Any enquiries regarding this document/publication should be sent to us at: organic.standards@defra.gsi.gov.uk

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1. Introduction

1.1 This document is a summary of responses to a Defra public consultation exercise on Draft Guidance Notes for UK organic Control Bodies (CBs) and UK organic operators on: The procedures to be adopted to ensure uniform testing of organic products for the presence of prohibited substances.

1.2 In broad terms, the two Draft Guidance Notes included within this consultation covered the same issues and identified respective, although similar, requirements for CBs or operators. This summary document does not cover each Draft Guidance Note separately, but distinguishes whether a specific response is from a CB or an operator. However, for results expressed in percentages or numerical terms an overall combined figure is used.

1.3 The purpose of the Guidance is to establish a testing procedure that is clear, fair and transparent as well as ensuring that a consistent approach is taken nationally across the UK.

1.4 The consultation exercise ran from 28 September 2012 to 21 December 2012. However, an extension was granted to early January owing to the proximity of the Christmas and New Year holiday period. A further delay in publishing this Summary of Responses was the result of carrying out more detailed analysis of the replies to a wide range of complex issues.

2. Background

2.1 Organic food and feed production in the UK and other EU Member States is strictly regulated. European legislation (Council Regulation 834/2007 and Commission Regulation 889/2008) sets out organic production rules, including the substances and products which may be used.

2.2 The Regulations provide a framework for the testing of organic products for substances that are not permitted in organic production, such as pesticides. However, they do not detail the procedures and processes Member States should follow, which has resulted in different approaches across the EU and within the UK.

2.3 The purpose of the consultation was to seek comments on proposals to establish a UK wide uniform testing procedure. Specific issues covered included:

- Cost implications
- Livestock testing
- Laboratory testing
- Criteria for ‘gaining a suspicion’
- Investigation of products certified as organic by another Control Body
- Sampling methods

2.4 The consultation also sought views on the adoption of “trigger levels” for the investigation of prohibited substances in organic products.

2.5 The consultation sought comments on 19 questions.

3. Headlines

3.1 There were 179 responses to the consultation. Of these, 40 were clearly identifiable as formal responses to the published consultation. The remaining 139 were completed template letters issued to organic operators by 2 CBs: Soil Association Certification Ltd (SACL) and Organic Farmers & Growers Ltd (OF&G). A copy of the template letter is provided at **Annex A**. This Summary of Responses to the consultation exercise treats the two types of reply separately.

3.2 The main issue identified by template respondents was Defra's proposed approach to testing of pre-certified products by another organic CB. The Defra position was that in recognition of the principles of mutuality and equivalence enshrined in the Regulations, a CB should not be able to test any product previously certified as organic by another CB unless its physical characteristics had changed or there was a suspicion that the product may have contained a prohibited substance. Re-testing would also be allowable where it was in respect of establishing compliance with the CB's own private standards

3.3 Overall, the key results from the 40 non-template responses were:

I. 1 respondent (3%) expressed full support for all of Defra proposals

II. 2 respondents (5%) agreed that additional testing must not be carried out on pre-certified products,

III. 21 respondents (53%) argued Defra had interpreted the Regulations incorrectly and random testing should be permitted on previously certified organic produce.

IV. 11 respondents (28%) made no comment on the issue of random testing[1].

V. 7 respondents (18%) supported the introduction of a trigger level.

VI. It was highlighted that UK operators should have a level playing field with non-UK operators so any trigger level must not go beyond existing EU levels.

VII. It was felt imperative that timescales for actions were clearly defined and adhered to.

VIII. Variations in sampling and analysis methods between laboratories should be recognised if test results were to be meaningful.

3.4 In essence, the 139 template responses disagreed with Defra's proposed approach that, as a general rule, a CB should not be able to test any product previously certified as organic by another CB.

[1] The consultation questions did not specifically ask about this issue.

4. Summary of Responses

Testing of pre-certified products

4.1 The proposal to introduce uniform testing procedures was welcomed. However, 53% of non-template responses disagreed with Defra's proposal that operators and CBs should not carry out unconditional random testing of a product already certified as organic by another CB.

4.2 There was strong support from CBs and operators to retain the right to carry out additional random testing to enable confirmation of the integrity of organic products. Due diligence required that products placed on the market should be above suspicion to enable consumers to have full confidence. Producers should have the ability to test products at any stage as they moved through the production and supply chains.

4.3 Testing should be permitted by a CB where there was reasonable suspicion that residues were present either because of use of pesticides at production or the possibility of contamination during storage or transportation. There was reference made to the need to be mindful that a distinction existed between a suspicion that a prohibited substance had been used and inadvertent contamination.

Template responses

4.4 139 responses were based on template letters that had been issued to organic operators by Soil Association Certification Ltd (SACL) and Organic Farmers & Growers Ltd (OF&G).

4.5 The template response argued that the Defra proposal on testing of pre-certified products posed a threat to the integrity of the organic sector.

4.6 The template response further stated that there was a disconnect in Defra's approach between disallowing additional testing of products previously certified as organic but allowing such testing for food safety reasons. It claimed this was likely to lead to confusion as testing could be conducted but only for limited reasons and also that the proposal contradicted "the application of precautionary and control measures" mentioned in European Council Regulation 834/2007.

4.7 The template response also mentioned that routine testing should not be viewed as an additional control. Rather, it was a valid tool used by operators to verify the provenance of organic products and to help against fraud or contamination and to provide consumer confidence. The supply and production chain was long and complex and testing was necessary at stages.

Sampling

4.8 The European Organic Certifiers Council (EOCC) disagreed with the sampling processes outlined in the draft Guidance. It stated that taking three subsamples

from a bulk sample could be problematic as operators did not always store their sample under the same conditions as the CB. Interpretation of results of follow on residue tests requested by an operator might be complicated if the characteristics of the sample retained by the CB and operators changed markedly because of respective storage conditions. It should be possible for inspectors to take samples from a particular section of field, rather than for them to be representative of the batch as a whole. EOCC is an umbrella association of 45 CBs located in Europe and around the world.

4.9 One CB mentioned that there were many recognised industry standards on sampling and formalised systems for testing. It stated that sampling must be accurate if enforcement action was to be taken and an agreed method of sampling would be difficult unless it was product by product specific

Laboratories

4.10 EOCC thought the accreditation paragraphs were vague. They highlighted the need for a laboratory to be accredited for the analytical method and potential molecules it could detect. One CB was concerned that laboratories could have different levels of determination and quantification and wondered whether there would be a standardised requirement. Some tests can take longer than the shelf life of the products.

4.11 A second CB linked this issue to GM where GM testing laboratories offer different tests for detection, quantification and identification as well as different levels of sensitivity. They suggested that the Draft Guidance could indicate the type and level of testing that CBs should carry out.

Setting of Trigger Levels

4.12 There was mixed support for setting a trigger level. While, in general, respondents agreed it would allow operators to have the certainty of knowing permitted residue limits and enable transparent investigations, there were differences of opinion over what the trigger level should be and how it should be applied. Respondents also cautioned that setting a trigger level might encourage unscrupulous operators to intentionally produce goods containing substances just below the trigger level.

4.13 Respondents pointed out that advances in analytical methodologies meant that the number of pesticides investigated had increased. The improved ability to detect trace element levels of residues had the triple effect of identifying deliberate misuse, pinpointing illegal use (e.g. minute residues in the same spray tank from a different crop) and, the undesired effect, of misleading consumers into thinking their food was unsafe owing to greater numbers of negative results. Some respondents proposed adopting a list of prohibited substances. The NFU objected to setting a trigger level at 15% of MRL, which was a proposed option.

4.14 To allow for a level playing field for UK operators, it was proposed that any trigger level should not be set higher than the norm in other Member States. In the absence of a harmonised EU level, the BNN (Bundesverband Naturkost Naturwaren Herstellung und Handele) was suggested as a UK norm given that it

was a standard most people worked to at the moment. However, differences in sampling and analysis methods between laboratories should be recognised if test results were to be meaningful.

4.15 The respondents who supported the proposal that additional testing must not be carried out on pre-certified products also accepted that the only justification for an additional test was where there had been a significant change to the product. They also stated that all costs associated with the additional test should be borne by the CB carrying out the test.

4.16 One suggestion was that a better approach to testing would be for CBs to be required to audit their franchisees to ensure that due diligence checks on organic raw materials used and products marketed were being undertaken. One operator believed the draft Guidance overlooked the due diligence requirement of retailers.

4.17 It was noted that the Draft Guidance did not require CBs to alert Defra when they had a reasonable suspicion about a product or where a trigger point had been reached, therefore no checks would be in place to ensure all CBs were working to this requirement.

Adopting Minimum Residue Levels to establish a trigger level

4.18 There was concern from operators that allowing prohibited substances up to the EU MRL levels would make organic appear no different to conventional produce. It was thought that the perceived absence of pesticides in organic products was a major driver in the consumer's decision to purchase organic food.

4.19 One operator suggested that a processor wishing to achieve absence of, or levels of prohibited substances below the MRL, would have to comply with a private standard offered by a CB. The only way to be certain ingredients sourced from abroad contained no prohibited inputs, or had inputs at levels below the MRL, would be in respect of the purchasing specification of the ingredient. Control of suppliers would be increasingly difficult.

4.20 Retailers set pesticide testing schedules based on the risk of a particular crop having the potential for the presence of an illegal residue. They highlighted that this should apply equally to organic and conventional crops where there was a need to maintain customer confidence and brand integrity.

4.21 One operator maintained that pesticide MRLs in general were based upon Good Agricultural Practice and had nothing to do with food safety, therefore testing for pesticide residues based upon food safety grounds could never be justified.

Summary of answers

Below is a summary of answers to the questions asked in the consultation document:

Cost implications

Q1. Do you have any views on the costs associated with the Draft Guidance? Do you have any views on how the trigger threshold options set out in Section 4 of this document might affect costs?

4.22 There was a mixed response to the risk of increased costs associated with the options. One CB did not believe that any part of the Draft Guidance would lead to an increase in testing to that already undertaken. However, another CB was concerned about costs, noting that as soon as values and limits were introduced, organisations would insist on testing. It saw a risk that test levels could be included in Codes of Practice and binding contracts.

4.23 One operator noted that costs were already being incurred in the CB and operator chains during the course of routine testing for pesticides. Those costs could continue to be borne as they were now. However, it was felt that requiring a CB to investigate on the basis of a trigger level could invariably increase costs. Respondents were keen to avoid disproportionate or prohibitive direct or indirect costs being placed on the UK organic sector.

4.24 It was highlighted by one CB that the new testing procedures would lead to an increase in the number of composite products being tested in an effort to offset the effect of the testing prohibition. A positive result would lead to the necessity of testing all the ingredients of the composite product rather than targeted testing, which could be done at present.

4.25 It was suggested that CBs should bear the cost of investigations and the operator the cost of providing answers to the question raised by the investigation. A variation on this was that the operator would only be financially liable if the product was found to be in breach of the Regulations, except where an operator's request for a retest produced the same or similar results showing the presence of a prohibited substance. It was thought by operators that this approach to charging was the key to preventing over-testing.

4.26 The withdrawal of a product from the market during the course of an investigation would have a negative financial impact on operators in addition to reputational damage. This could also be an affect when an investigation revealed a plausible reason for the presence of the prohibited substance, meaning the suspicion was unsubstantiated.

4.27 It was suggested that any trigger threshold that automatically initiated an investigation and prevented an operator from using a product, even temporarily, would have disastrous effects because customers, especially multiple retailers, have stringent supply requirements and penalise suppliers for loss of profit for non-supply.

4.28 One operator noted that differing non-mandatory trigger thresholds (or none) would not necessarily make any difference to initial costs but the adoption of a mandatory trigger level would involve substantial additional costs. Having no trigger level was noted by one operator to potentially induce further investigation for unavoidable contamination, which was a cost for the whole organic chain.

Testing & sampling

Q2. Do you have any comments on the criteria for gaining a suspicion? Are they the right criteria for this purpose?

4.29 CBs noted that the lists in para 2 of the Draft Guidance Note for Control Bodies were reasonable but not exhaustive. Inclusion of 'heightened concern' was suggested to cover when a CB may have a concern about the status of a previously certified product, based on a general concern about the operator's management of their organic system.

4.30 The use of the word 'reliable' in respect of the assessment of the credibility of the informant of an allegation and assessment of the allegation was considered too ambiguous and did not encourage CBs to investigate all complaints. It was suggested by some that the minimum criteria wording in the CB Draft Guidance be changed from "reliable information" to "reliable evidence based information". One CB stated it felt duty bound to acknowledge all complaints and suggested the deletion of the word "reliable".

4.31 2 CBs and an operator observed that the starting point should be consideration of the likelihood of whether there had been adventitious contamination or a system failure (deliberate abuse or lack of knowledge). It was important not to conflate adventitious/external contamination with the suspicion of deliberate use of prohibited materials. A risk-based approach to testing was advocated by one.

4.32 One operator provided substantial suggested redrafting of this section which is not reproduced here.

Q3. In order to produce an approach that is acceptable to the sector as a whole, do you have any views and proposals on alternative sampling methods?

4.33 A variety of views were expressed ranging from support of the suggestion contained in the Draft Guidance document that three samples shall be extracted from a product, with one sample used for testing, the second kept by the operator, and the third kept by the Control Body. Others suggested adoption of the sampling methods detailed in Council Directive 2002/63, "Establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin", while one view warned that accurate sampling of bulk material was difficult to achieve.

4.34 One CB agreed with the suggested approach that at least one bulk sample should be taken and each sample should be split into three sub-samples. It stated that three individual samples would not always be representative of the product. To reduce confusion, smaller samples taken from bulk samples should be referred to as sub-samples. Another CB and 2 operators asked for the minimum traceability information to also include the method of sampling alongside size of the lot or field from which the sample was taken.

4.35 One operator highlighted the inaccuracy risk of some methods of testing, noting that paragraphs 11-13 of the operators' Draft Guidance seemed to be based on standard protocols which were the 'best we can do.' For bulk products, these were

too inaccurate to be used as a sole outcome in deciding on pesticide residues. It was argued that sampling during the movement or circulation of grain should be used when sampling for pesticide residues or microbiological contamination

4.36 One operator emphasised that sample bags should be carefully chosen to avoid cross contamination by the bags themselves e.g. diphenylamine is widely used in plastic bags. Double bagging was also recommended to prevent spillage or contamination.

Q4. Do you have any comments on the proposed procedure for testing livestock and the current limitations for testing the actual animal?

4.37 One CB remarked that "The regulations do not distinguish between livestock products and other products. Article 65 (2) of Commission Regulation 889/2008 specifically referred to sampling and testing for unauthorised substances". This respondent added that in the list in paragraph 14 of the Draft Guidance Note for organic operators 'Livestock testing' was for livestock enterprise inspection and was not applicable to Article 65 (2). The section on livestock testing was deemed to be unnecessary by one CB. Another view was to use the sampling method mentioned in Council Directive 2002/63, as described above in paragraph 4.35 above.

4.38 It was also argued that there was no reliable test to accurately determine the use of prohibited substances, and that inspection of the production system should be rigorous enough to determine compliance.

Laboratories

Q5. We understand that there are some analytical differences between different laboratories. These differences are only slight but they could be significant where small quantities of residue are being analysed. Do you have any views on whether this is a significant issue and if so how it might be addressed?

4.39 The use of accredited laboratories and tests was cited as the only credible course of action, although it was noted that laboratory results were not infallible. Results should be monitored, with differences reported to Defra to identify whether problems existed between laboratories. A Defra-led periodic review of the consistency of results was suggested.

4.40 One operator noted that it was not always possible to find accredited tests for all substances on all products. The Guidance should clarify that "when no accredited test exists an accredited laboratory must be used, using accredited methods." It also noted that analytical variance was unavoidable and suggested ignoring analytical variance and going with a limit of quantification.

4.41 One operator noted that awareness of analytical differences between laboratories could have far reaching consequences along the supply chain which could lead to commercial distortions of trade. Another operator stated that differences in analytical methods were exacerbated by differences in laboratory practices which would be a significant issue if residue testing was regarded as the primary basis for

Q6. Do you have any views on the investigative actions that might be undertaken, in particular how the investigative process might assess whether the level of prohibited substance is consistent with actual use of the substance as opposed to unavoidable contamination?

4.42 One operator believed the Draft Guidance documents to be flawed, in conflict with the Regulation, and confused in relation to this question. It was noted that neither Article 91(1) or (2) of 889/2008 dealt with the levels of prohibited substances. The continued need to inspect production systems was essential. This operator provided detailed suggestions for a redraft of this section.

4.43 Another view was that having total supply chain visibility should enable greater clarity of the production process and increase the ability to establish the reason for detected contamination.

4.44 Other views expressed were that the investigative process should be thorough but it was not always possible to determine from the levels of detected prohibited substance if it was the result of "actual use" or "unavoidable contamination". A high level did not instantly suggest deliberate use and neither should low levels be taken to mean unavoidable contamination. Therefore, a positive test should not be regarded as a substantiated suspicion. Guidance on each of these should be kept separate for practical and regulatory reasons.

4.45 The Guidance should give more detailed minimum requirements for CBs. Although comprehensive, this should not be exhaustive to allow for individual circumstances to be considered

4.46 One operator suggested that where an active ingredient approved for use on a conventionally approved crop was found, reference to the MRL would be a good starting point to determine its status as actual or unavoidable.

Q7. Do you have any comments on the timescales given for Control Bodies to inform each other of the findings and their investigations?

4.47 There was a significant difference of opinion on the proposed timescales.

4.48 One operator was satisfied with the proposed timescale of two working days for the CB who discovers the presence of a prohibited substance in a product to notify the CB who had previously certified the product as organic of its finding. The draft guidance says the notified CB is expected to carry out its investigation and report back the outcome of its investigation within 30 days of being informed. The operator noted that some investigations could be complex and take more time. Others cited speed to be paramount especially when dealing with perishable goods. Some respondents considered 30 days to be too long for CB 1 to report back to CB

2 on the outcome of investigations undertaken following CB 2's discovery of a prohibited substance.

4.49 An amendment to the Draft Control Body Guidance document was recommended to ensure clarity, consistency in language and reference to defined time limits. It was suggested that this should also be clear on whether the limit is two working days or 48 hours. Another view was the timescale needed further revision to specify when CB 1 and CB 2 actions commenced. There should be clear guidance on the timescale for CB 2 to inform CB 1 of a positive residue test result.

4.50 There should also be a specified timescale to indicate when CB 1 is expected to begin its investigation. The same operator also advised that where two or more CBs were involved in an investigation, Defra, as the UK Competent Authority, should ensure all the CBs involved were communicating effectively and responding in appropriate timescales.

Q8. Do you have any comments on the details that should be shared and the proposed timeframe for doing so?

4.51 A Control Body noted this should include information about the product involved, the operator, the sampling and the testing that produced the positive residue result. It should be done within 48 hours. Additional information suggested for sharing was any history of use of a prohibited substance on the field where the produce was grown, the location and soil type of the field where the produce was grown and information on whether the substance was used on any crops grown in adjacent fields.

4.52 One operator listed the details to be shared as product, operator, and the specifics of the fraud or mismanagement that caused the product to lose its organic status. Two days to share information with Defra was thought suitable and five days for an operator to submit an action plan to correct mismanagement.

Q9. Do the checks, tests and audits reflect those, that in your experience, are undertaken by operators as a normal part of their business?

4.53 Two CBs and one operator questioned the relevance of the section and suggested its deletion from the Draft Guidance Note for Operators.

4.54 In other responses, some reported these to be in line with their normal practices undertaken for due diligence reasons, although one operator noted that their organic certifier did not test organic potatoes from whatever source. One operator said these checks, tests and audits were not systematic but based on a risk assessment of each ingredient. This operator suggested the insertion of the words "These may include" to the start of potential tests and audits mentioned at points 1 and 2 of the guidance document.

4.55 One operator noted that 'Critical Control Points' should be renamed 'Organic control points' as the former only related to food safety.

Q10. Do you have any comments on the proposed actions that operators should take when samples are taken?

4.56 Three respondents put "No comment" against the question and 4 expressed agreement with the actions. One CB's view was that in addition lot and field numbers should be included. It was not always practical to sign individual samples and it should be sufficient for accompanying documentation to be signed. It was suggested that para 7 of the Draft Guidance Note for Operators document should include an instruction for a minimum of 3 sub-samples to be taken to allow for additional analysis if the previous tests were queried

4.57 One operator said that "the operator's representative must be appropriately authorised to represent the operator."

Q11. Do you have any comments on the proposed procedure and the timescales involved for when an operator queries the results of a test?

4.58 One CB advised that the second bullet of para 10 of the Draft Guidance Note for Operators document (CB acknowledging the query and providing a summary of how it would undertake further analysis of the product) should allow for further investigation as well as "and/or" in addition to further analysis.

4.59 The 48 hour timescale for operators to inform their CB of an intention to query a positive residue test result was suggested by one operator to be insufficient especially if the notification was received late on a Friday. 72 hours was suggested as an alternative. Another operator suggested the timescale should be expressed in working days.

4.60 Two operators expressed the view that they should not need to meet the cost of the second analysis as they were paying the CB for certification, including annual inspections, and testing was only a supplementary method. However, two operators did agree that it fell to operators to pay the costs of a second analysis. It was also argued that if an operator was paying for the second analysis it should be able specify the accredited laboratory to be used.

4.61 Two operators asked that sentence 2 of paragraph 9 of the Operators Draft Guidance be amended to read "The Control Body must undertake testing of another available primary sample."

Q12. Do you have any comments on the proposed procedures that operators should follow when there is a substantiated suspicion?

4.62 One CB noted that contamination occurring through negligence or lack of care or precaution should not be described as unavoidable. Another CB highlighted that paragraph 13 of the Operators Draft Guidance needed to be revised to show expressed timescales for CB and operator actions. For example, the CB quoted the reference "The operator will be given time to query the results if he wishes" as being imprecise. One CB asked for a definition of substantiated suspicion and offered the

4.63 One operator suggested the removal of sub-point 3 of paragraph 13 of the Draft Guidance Note for Operators document because obliging an operator to withdraw any reference to organic production at that stage was premature. Two other operators cautioned against the recall of a product as a general principle unless there was a potential serious breach of organic regulations or a food safety issue.

Trigger levels

Q13. Do you have any views on the adoption of trigger levels for the further investigation of products?

4.64 There was a mixed response to this question. One operator firmly disagreed with the UK defining a trigger level that was not harmonised in the EU. One CB responded that if they were introduced they must be based on sound scientific research.

4.65 One operator stated that the trigger level would need to be set by each pesticide active ingredient and by commodity/produce and set at the "Limit of Detection" (LOD),[2] but there were cases where levels would have to be set higher. One operator noted that the adoption of trigger levels should always be interpreted with adjustments for dehydrated products.

4.66 Two CBs were of the opinion that the presence of a prohibited substance should instigate an investigation to ascertain the reason for the contamination and to determine if the product had been produced to organic standards. One of these CBs wished to see trigger levels only required to determine if a product should be placed on hold pending the outcome of an investigation.

4.67 The second CB also expressed concern that setting a trigger level for investigation might tempt unscrupulous operators to dilute products to just below the threshold and mask fraudulent activity.

4.68 A third CB suggested that in the event of adoption of trigger levels CBs should be given the option to investigate residue levels reported below the trigger threshold if they wished to.

4.69 One operators' group supported the adoption of trigger levels as it would prevent unnecessary testing of produce and enable all in the industry to know the limits they were working to. Another operator noted that the application of trigger levels to multi-component products would be difficult and to mitigate that, trigger levels should only apply to raw materials.

[2] The Limit of Detection is the smallest concentration or amount of a substance or product that, under analysis, can be reliably shown to be present in a product.

4.70 Two operators strongly opposed the adoption of trigger levels on the grounds that the Organic Regulations were not a “free from” Regulation and levels of prohibited substances were not specified in them. Trigger levels should only be adopted if they were included in an update of the Regulations.

4.71 One representative body supported the principle of trigger levels to ensure that investigations were launched in a clear and transparent manner. To allow for a level playing field for UK operators, it asked that the trigger level should not go beyond EU levels and that trigger levels should not be set above those outlined by the VMD or EMEA.

Q14. Do you have any views on including a requirement that no more than two prohibited substances should be present in a product and if this number is exceeded regardless of the level, further investigation would also be necessary?

4.72 The scientific rationale behind the basis that no more than 2 prohibited substances should be tolerated was questioned. Prohibited substances may be present for a number of ‘permitted’ reasons. From a pesticide perspective, a cut-off at two prohibited substances was inconsistent with drinking water legislation which was not prescriptive on numbers provided that the total limit on pesticide level was not exceeded.

4.73 It was suggested that the presence of prohibited substances irrespective of the number should initiate an investigation.

4.74 The majority of CBs were clear that they should investigate all positive residue tests regardless of the number of prohibited substances found.

4.75 One operator cautioned on the possible effect of applying the approach contained at section 4.4 of the Draft Guidance on the testing procedure document which states “regardless of the level, further investigation would also be necessary.” The operator observed that the level of presence of a substance may differ depending on the laboratory.”

Trigger point options

Option 1

Q15. Do you have any comments on the setting of trigger levels for different organic products and prohibited substances?

4.76 Deemed to be problematic by some as it would entail a long list of organic product/ prohibited substance combinations and require considerable input to compile. One CB highlighted the difficulty in testing multi-ingredient products to obtain evidence to allow a CB investigation. This would be exacerbated by the Draft Guidance’s approach to disallowing random testing on previously certified products. One operator agreed that there would have to be an approach to processed products and how the processing should be taken into account.

4.77 One view was that as residue detections below the trigger level would not be investigated, there would consequently be no remedial action to address the contamination and prevent future occurrence of contamination.

4.78 It was noted by one operator that particular consideration should be required when dealing with a processed product. Further, that processing factors needed to be taken into account when considering the concentration of the prohibited substance with the trigger level.

4.79 However, one representative body thought the proposed approach to be a helpful piece of information for CBs and operators and noted it was similar to the "crop/product combinations" published for MRL values and used by industry. They proposed that the trigger level should be no less than 0.01mg/kg.

4.80 One operator suggested option 1 in tandem with option 3 would work well i.e. having a default trigger level of a % of MRL, with some exceptions at a higher level.

Option 2

Q16. Do you have any comments on setting trigger levels based on BNN values?

4.81 There was strong support both for and against the adoption of the BNN level, with one CB commenting that most manufacturers already test to BNN as a minimum.

4.82 One Confederation commented that it was unclear if the 25% adjustment factor to account for any testing inaccuracies applied only to dehydrated products or all products. Also, whether the 0.01mg/kg applied to the total value of all prohibited substances or was an individual value for each.

4.83 There was significant CB support that positive residue test results should be investigated even if below the trigger levels. One agreed that BNN values would be a sensible trigger in determining whether to put a product on hold pending the outcome of an investigation. Another CB suggested using trigger points to mark when a CB must investigate.

4.84 One operator highlighted the risk that there were limited laboratories which could test to the BNN low levels. However, testing to the lower limit and then invoking pragmatic investigations could be useful to the sector. Another operator could not support BNN values without flexibility to adjust for certain activities. A third operator noted that for some pesticides 0.04 mg/kg was insignificant where for others it could be high.

4.85 Although supportive of using BNN levels, one operator did not agree with the proposal to require investigation where three or more prohibited substances were detected below the trigger level. Laboratory Reporting Limits should be fixed at a minimum of 0.01 mg/kg to avoid unnecessary costs.

4.86 Two operators rejected the adoption of the BNN value. They commented that there were currently certified UK products with residue levels higher than BNN values and the approach would impact on exports to countries that had adopted the BNN values. Adopting the BNN values in the UK would could result in some withdrawal from the organic sector. It would also add bureaucracy and costs, and drive down consumer choice.

Option 3

Q17. Do you have any comments on setting trigger levels that are a proportion of the MRL? Do you have any views on setting the trigger level at 15% of the MRL?

4.87 The 15% of MRL was not thought to be workable and received little support. One representative body questioned the basis for this proposal and pointed out that the trigger level could not be measured if the MRL was at the LOD or the 15% was less than the LOD. However, two operators welcomed the fact that it was at least a scientifically justifiable option (especially when used in tandem with option 1).

4.88 One CB emphasised its view that effort should be focussed on fraudulent activities and malicious practices rather than making it difficult for companies that are doing their best to comply. It thought it wrong to concentrate on low levels of contamination through a complicated supply chain. It suggested levels of 1/3 MRLs for investigation and 2/3 MRLs to be considered as something significant.

Option 4

Q18. Do you have any comments on investigating all positive test results (i.e. setting no trigger levels)?

4.89 Although two CB's advocated investigation of all positive test results, others objected on the grounds that it would be too bureaucratic and costly for C B and operators. It could also be disproportionate, disruptive, and adversely affect UK operators in comparison to foreign operators. Again, respondents raised the issue of differentiating between types of contamination.

4.90 One operator group did not support investigating all positive test results. It argued that with analytical technique improvements laboratories were able to detect increasingly lower levels of pesticide residues and more prohibited substances that were previously undetectable. It warned of increasing investigations being undertaken where there were no human health and safety issues and possible subsequent rejection of produce which is wholesome and safe.

Q19. Do you have any other suggested approaches to adopting "trigger levels"?

4.91 One CB commented that "presence of any prohibited substance should be investigated to determine if the product has been produced to organic production standards and to assess if the operator has sufficient measures in place to identify critical control points and risks of contamination within their production systems. Trigger levels should only be required to determine if a product should be put on hold while an investigation takes place. If that is the case we believe that BNN values are a sensible trigger to use."

4.92 One operator mentioned being "concerned that product testing if inappropriately applied will place unnecessary burdens on operators and will undermine the systems based EU organic regulations."

5. The way forward

5.I. Defra is reviewing the Draft Guidance Notes on the basis of the outcome of the consultation exercise and will announce shortly its proposed approach. Defra notes that while there was almost universal opposition to the proposed approach in relation to testing of pre-certified products, there was very little consensus on many other aspects of the Draft Guidance Notes.

5.II. As part of its consideration of the responses, Defra is also conscious of ongoing work by the European Commission to review the operation of Regulation 834/2007 and recent agreed changes to the control and inspection provisions in Regulation 889/2008. These factors will be taken into account in further consideration of the Draft Guidance Notes.

Annex A – Template Letter

XXXXXXXX
Organic Team
Defra
Area 8E
Milbank
c/o 17 Smith Square
London
SW1P 3JR

Dear Mr XXXXXXX,

Consultation on Testing of Organic Products in the UK

In respect of the above mentioned consultation, we wish to make a representation to be taken into consideration.

The proposed guidelines as they stand pose a serious risk to the integrity of the UK organic sector by restricting the instances in which both operators and control bodies are able to carry out testing on organic products as they move through the supply chain.

The consultation document asserts that testing for 'organic integrity' is not valid where product has previously been certified by another EU control body. To make this assertion you rely upon Article 34 (1) of Regulation 834/2007, yet have failed to explain why random or routine testing for organic integrity would be in contravention of the Article.

Testing is not an 'additional control', it is a method of checking which secures the organic supply chain against fraud and contamination. Indeed, Title V of Regulation 834/2007 ensures that the control system 'shall comprise at least the application of precautionary and control measures'; a requirement served well by an open policy on testing.

Such testing, in and of itself, does not “prohibit or restrict the marketing of organic products controlled by another control authority or control body located in another Member State”.

Further, proposals in the consultation document that operators may test product for the reason of 'food safety', but may not test for reasons of organic integrity (albeit the same test for the same materials), presents a serious risk of confusion, increased bureaucracy and, potentially, legal challenge.

It is our view that the testing regime proposed in the guidelines under consultation lends itself to undermining trust throughout the organic sector and will lead to more, not less, publicly acknowledged instances of contamination. The blame for this would, ultimately, come to rest at Defra's door should these proposals be implemented and routine and random sampling be removed from the system.

In summary, while we welcome an overall clarification of testing guidelines for organic produce, we feel that the proposals as they stand pose a serious risk to the integrity and consumer perception of certified organic products. So we call upon Defra to remove the proposed barriers to unrestricted sampling and testing

We look forward to your response.

Yours sincerely,

Annex B – List of Respondents in Alphabetical order

Non-Template respondents

Agricultural Industries Confederation

Alara Foods Ltd

Bio-Dynamic Agriculture Association

British Retail Consortium

Buckley Foods Ltd

Bushwacker Wholefoods

Carr House Farms Ltd

Crop Protection Association

Dairy Crest Ltd

European Organic Certifiers Council

Food and Drink Federation

G.N.F. & G.A. Browning

Greenvale AP

Hook House Farm

Humdinger Ltd

Ingram Brothers Ltd

Institute of Organic Training & Advice

J W Spencer Ashworth

Jordans Ryvita

Martin Paine

McCormick UK Ltd

Morning Foods Ltd

Mr & Mrs M C Mowat

National Farmers Union

Oliver Dowding

Organic Arable Marketing Company Ltd

Organic Farmers & Growers Ltd

Organic Food Federation

Peter Muskus

Pillars of Hercules Farm

Plum Baby Ltd

SAI Global Assurance Services Ltd

Saxon Agriculture Ltd

Scottish Food Quality Certification Ltd

Soil Association Certification Ltd

Scottish Organic Producers Association

T C & N Taylor Ltd

TG & VE Duffee

Valerie's Veggies & Plants

Yeo Valley

Annex C – List of Respondents in Alphabetical order

Template respondents

A Buckland

A M Ball & D P Norris

A M Wadley & J D Saville

A N Bragg

Acton Court 1535

AG Thames Holdings Ltd

Alan J Bassett

Alison Goddard

Andrew Brown & Kate Brown

Andrew Woof

Annanwater Organics

Ardfern Organics

B Carlisle

Bakkavor Ltd

Bar & Restaurants Foods Ltd

Barrington Park Estate

Bennett Opie Ltd

Berkeley Farm Dairy

Bowman & Sons

C E Murch Ltd

Caroline & Robert Humphrey

Clearspring Ltd

Clipper Teas Ltd

Coffee Plant

Colbrans Farm

Cut4Cloth Ltd

Delfland Nurseries Ltd

Diana Guiness

Downrip Farm

Duchy Originals Ltd

Durie Farms

Earthoil Plantations

East Wingates Farm

EasiYo Products (UK) Ltd

E B M Helme & Sons

Equal Exchange Trading Ltd

Elizabeth Buchanan

Ffynnonston Organics

Flitton Hill Organics

Food Brands Group

Forestside Farm

Freedom Brewery Ltd

Freeworld Trading Ltd

Friday Street Farmers

Garden Organics

Ginger Dragon Ltd

Gleadell Agriculture Ltd

Grimsdyke Grazing

G's Fresh Ltd

H Bengough

Halo Foods Ltd

Hankham Organics Ltd

Haygrove Ltd

Henry Nicholls

Hi Peak Feeds Ltd

High Weald Dairy LLP

Highland Wholefoods Workers Co-op

Holt Farms Ltd

Honey Monster Foods Ltd

Humber Growers Ltd

J Finlay & Son

J H Moore & Son

J R Hoskins

James Fulton

James Fitzharris

Jumpin Juice Ltd

Karen Philippson

Keith Davies

Keith Dean

Keith Roberts & Son

Kerry Ingredients (UK) Ltd

Knepp Castle Home Farm

L Sealey & Son Ltd

Laird Holdings

Langmeads of Flansham

Liberation Foods CIC

Little Valley Brewery Ltd

Livestock Management Systems Ltd

London Scottish International Ltd

Luddesdown Organic Farm Ltd

Malcolm Hay

Marigold Health Foods Ltd

Marstons Plc

Michael Knights

MJH & Sons Ltd

M J Crowson

Moulton Bulb Co Ltd

Gareth & Rachel Rowlands

Neal's Yard Remedies

Nesbitt Farms

NHR Organic Oils Ltd

Nicholas Watts

Nutrel Product Ltd

Orchard Organic Farm

Organic Acorn Dairy

Organic Farm Foods

Organix Brands Ltd

Origin Wine Ltd

P D Organic

Paul Clarke

Peter Glanville

Phoenix Organics Ltd

Poulton Fruit Consultants Ltd

Produce World Ltd

Prospects Trust

Pukka Herbs Ltd

Queenswood Natural Foods Ltd

R Grant & Son Leverton Limited

Richard J Tomlinson

Riverford Organic Farms

Rowse Honey Ltd

S Wheeler & Son

Scotland’s Rural College

Seasoned Pioneers Ltd

S F Oldfield & Son

Shimpling Park Farms Ltd

Slade Farm Organics

Soyfoods Ltd

Springfield Poultry

St Martin’s Tea Room

Stuart Whitaker and Co

T. Roberts & Son

Tangmere Airfield Nurseries Ltd.

The Authentic Bread Company

The Organic Herb Trading Company

The September Organic Farming Partners

The Vineyard Organic Day Nursery

Tideford Organics Ltd

Tio Ltd

Tony Howard

Twin Trading Ltd

Unicorn Ingredients

VF PARKER & CO

W & P H Henderson

Western Seeds Ltd

Weston & Co

Wight Salads Ltd

Whitfield Farm Organics

W Armitage