

Our Ref: ACP Consultation
Date: 8 March 2012

Dear Sir/Madam

Consultation on the options for the future of the Advisory Committee on Pesticides (ACP)

1. I am writing to invite your comments on Government proposals on the future of the Advisory Committee on Pesticides.
2. The purpose of this consultation is to seek views on options for the future of the Advisory Committee on Pesticides and the Advisory Committee on Pesticides (Northern Ireland) – collectively referred to in this document as the ACP. The option proposed by the UK Government is to abolish the Committees as statutory Non-Departmental Public Bodies (NDPB's) and to reconstitute them as a new expert scientific committee. However, the Government is willing to consider alternative approaches and Ministers wish to consider respondents' views on their proposals before reaching a final decision.
3. The Government is minded to use the powers in the Public Bodies Act 2011 (PBA) to implement the proposals outlined in this consultation. The PBA requires that Ministers consult on their proposals before laying a draft order. On this basis, Ministers invite comments on these proposals as measures that might be carried forward by an order under the PBA, subject to the outcome of this consultation. All responses, including those which propose an alternative to the Government's currently preferred option, will be given due consideration.
4. Shortly after the 2010 election, the Government announced that it would review arms-length bodies in order to reduce the numbers, costs and improve accountability. Many of the results of this review have since emerged, with the announcement in October 2010¹ being of particular relevance to advisory bodies.
5. The PBA² is the main legislative vehicle for implementing the outcome of the review. The Act allows Ministers to make Orders to abolish (in the case of the ACP) or make certain changes to the statutory public bodies listed in the various schedules to the legislation. The Order for the ACP can only be put to the UK Parliament after consultation and would be subject to Parliamentary scrutiny and the consent of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

¹ <http://www.defra.gov.uk/news/2010/10/14/public-bodies/>

² <http://www.legislation.gov.uk/ukpga/2011/24/contents/enacted>

6. The Devolved Administrations have agreed that this consultation should cover the whole of the UK.
7. This consultation is about whether the Government should exercise the power in the Act to abolish the ACP. To consider this question it is, of course, necessary to have in mind the appropriate future arrangements. But this consultation does not address the detail of these arrangements, such as the terms of reference or membership of any successor body.
8. Further background on the ACP and the changing nature of its work is contained within Annex A, whilst the Options for consideration and the Government's preferred option and rationale is at Annex B. This consultation does not require an Impact Assessment (IA) as the proposals do not impose any new costs, administrative burdens, or information obligations on companies or third sector organisations. Initial screening suggests that there will be no equality impacts and so an Equality Impact Assessment (EqIA) is not required.

Responses

9. Defra invites the views of all stakeholders who have an interest in the future of the ACP. Responses should be sent to the following email address:

pesticides@defra.gsi.gov.uk

Or by letter to:

Mark Wilson
Defra
3rd Floor, Foss House
Kings Pool
1-2 Peasholme Green
York, YO1 7PX

10. Responses should be received by Friday 4th May 2012. A copy of this consultation and the List of Consultees are available on the Defra Website at the following link: <http://www.defra.gov.uk/consult/open/>.

Consultation Criteria

11. This consultation is in line with the Code of Practice on Consultations. This can be found at <http://www.bis.gov.uk/files/file47158.pdf>.
12. When this consultation ends, we intend to put a copy of the responses in the Defra library at Ergon House, London. This is so that the public can see them. Also, members of the public may ask for a copy of responses under Freedom of Information legislation.
13. If you do not want your response - including your name, contact details and any other personal information - to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, this will not count as a confidentiality request.

14. Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.
15. We will summarise all responses and place this summary on our website at www.defra.gov.uk/consult. This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.
16. To see the consultation responses and summaries, please contact the library at:

Defra Information Resource Centre
Lower Ground Floor
Ergon House
17 Smith Square
London, SW1P 3JR

Telephone: 020-7238-6575
Email: defra.library@defra.gsi.gov.uk
17. Please give the library 24 hours' notice. There is a charge for photocopying and postage.
18. If you have any comments or complaints about the consultation process, please address them to:

Defra Consultation Co-ordinator
Area 7B, Nobel House
17 Smith Square
London, SW1P 3JR

or by email to consultation.coordinator@defra.gsi.gov.uk.
19. Thank you for your help in this matter. If you have any queries on this consultation, please contact me as per the details listed above.

Yours faithfully

Mark Wilson
Department for Environment, Food and Rural Affairs
Direct line: 01904 455590
Web: <http://www.defra.gov.uk/environment/quality/chemicals/>

Background on the ACP and the changing context for its work

The current remit and status of the ACP

- 1.1 The Advisory Committee on Pesticides (ACP) is an independent scientific advisory committee. It provides advice to Ministers in accordance with its terms of reference (paragraph 1.2).
- 1.2 The ACP was established under Section 16(7) of the Food and Environment Protection Act 1985 (FEPA). The Advisory Committee on Pesticides was established by the Control of Pesticides (Advisory Committee on Pesticides) Order 1985 and the Advisory Committee on Pesticides for Northern Ireland by the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987. The terms of reference are to provide Ministers with advice, either when requested to do so or otherwise, on any matters relating to the control of pests in furthering the general purposes of Part III of the Act.

The general purposes of Part III of FEPA are that the provisions of that part of the Act shall have effect:

- With a view to the continuous development of means
 - to protect the health of human beings, creatures and plants;
 - to safeguard the environment; and
 - to secure safe, efficient and humane methods of controlling pests; and
- With a view to making information about pesticides available to the public.

Under Section 16(9), Ministers are required to consult the Advisory Committee:

- as to regulations which they contemplate making;
- as to approvals of pesticides which they contemplate giving, revoking or suspending; and
- as to conditions to which they contemplate making approvals subject.

- 1.3 More information about the remit, membership and work of the ACP can be found on its website at <http://www.pesticides.gov.uk/guidance/industries/pesticides/advisory-groups/acp>.

Changing regulatory context for the work of the ACP

- 1.4 The regulatory landscape for pesticides has changed since the ACP was given its current status under FEPA over 25 years ago. At that time, all decisions on the approval of pesticides were taken by UK Ministers. Major issues, such as the first approval or review of active substances, were considered individually by the ACP. More routine applications for approval were considered by the regulator under the guidance of the ACP. However, the EU has since come to play an increasingly important role in the evaluation and approval of pesticides. Since the 1990s, decisions on the approval of active substances falling within the remit of the ACP

have been taken at EU level under provisions of legislation covering plant protection products and biocide products. Decisions on the approval of products containing those active substances are taken at national level but according to an increasingly tightly defined body of rules and guidance.

- 1.5 Since June 2011, Regulation (EC) 1107/2009 (published on 24 November 2009) has further harmonised the regulatory system for plant protection products. In particular, previous arrangements that allowed provisional approval in Member States alongside applications for EU approval have been discontinued.
- 1.6 This does not mean that there is no remaining role for the UK regulator or for independent expert advice to support and challenge this work. But the requirements are different now in that the process for deciding whether an active substance can be approved for use in the EU involves all Member States, the European Food Safety Authority (EFSA) (for plant protection products) and the European Commission.
- 1.7 The existing European requirements on biocides, set out currently in Directive 98/8/EC, are also due to be further harmonised through a new directly-acting Regulation on placing on the market and use of biocidal products, which will enter into force on 1 September 2013. In light of this, the Government also intends to consider whether the terms of reference of the ACP or its successor should be adjusted to cover issues arising from the operation of the EU biocides regime.

Changing scientific advisory context for work of ACP

- 1.8 To ensure that any Arms Length Body Review reforms are carried out in accordance with the Principles of Scientific Advice to Government, the Government, on the advice of its Chief Scientific Adviser, Professor Sir John Beddington, agreed that where departments were considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards. Such committees must provide independent advice in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees. Escalation routes must be in place to ensure advice from expert scientific committees can be submitted directly to Ministers, as appropriate. For departments who are significant users of science and/or have a large number of expert scientific committees or other science advisory bodies – it is good practice to have an overarching departmental Science Advisory Council with oversight of all such scientific advisory bodies.
- 1.9 On 14 October 2011, the Government announced its intention to reconstitute the majority of Defra's advisory bodies as committees of experts. In addition, there was a review during 2010 of the Science Advisory Council of Defra³, led by Professor Charles Godfray. Consequently, as a result of the advice from the Government Chief Scientific Adviser, and the recommendations from the Godfray review, there was a statement made to Parliament on 26 January 2011⁴ by the Defra Secretary of State, Caroline Spelman.

³ <http://sac.defra.gov.uk/2010/11/02/scientific-advice-to-defra-praised-in-independent-review-2-november-2010/>.

⁴ <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/wmstext/110126m0001.htm#1101264000014>

- 1.10 Changes to the Science Advisory Council (SAC) for Defra to help the department achieve better and more co-ordinated scientific advice were announced on 26 January 2011 in a Written Ministerial Statement. Following the review of Defra's Arms Length Bodies in October 2010, and a separate independent review of the SAC, the majority of Defra's scientific advisory bodies have been reconstituted as expert scientific committees to provide advice on specific areas.
- 1.11 The SAC has been re-modelled based on the recommendations of the independent report. It remains a Non Departmental Public Body with a strengthened role in supporting the Chief Scientific Adviser in the oversight of all Defra expert scientific committees. New SAC members selected on the basis of the breadth of their scientific knowledge were appointed through an open recruitment over summer 2011 and the reformed Science Advisory Council, which met for the first time in September 2011, is in a stronger position to provide independent advice to Ministers and the department's Chief Scientific Adviser on the science underpinning a wide range of Defra policies. This is underpinned by the commitment to ensure that the Chief Scientific Adviser meets the chair of each of the new expert committees at least once a year. Committees will also have the opportunity to input to SAC's annual report and are likely to be invited to a future SAC meeting to discuss their work.
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Options for consideration, Government's preferred option and rationale

2.1 There are three options under consideration:

Option A: Maintain the status quo - the ACP continues as a statutory, advisory Non-Departmental Public Body (NDPB).

Option B: Abolish the ACP and put nothing in its place.

Option C: Abolish the ACP and reconstitute it as an expert scientific committee.

2.2 Option A fails to recognise that the landscapes for the regulation of plant protection products and for scientific advisory committees have changed significantly. The present opportunity to take account of these changes and reform the ACP would be lost.

2.3 Option B is counter to the importance which Ministers and society attach to the flow of independent, impartial and expert advice where necessary to protect the environment and public health.

2.4 Option C is the Government's preferred option – for a number of reasons:

2.4.1 Defra is putting its scientific advisory committees on a new footing to strengthen its science and evidence base to support policy. The reform of the ACP is part of this process which has been guided by advice from the Government Chief Scientific Adviser, and an independent review.

2.4.2 Non-statutory advisory bodies are inherently more flexible and nimble and can be adapted, for example to acquire new terms of reference. Statutory bodies can sometimes be hindered in adapting because of the limited availability of parliamentary time to make changes.

2.4.3 Statutory bodies can be overtaken by legislative developments particularly where these stem from Europe.

2.4.4 The committee retains an independent and technical advisory function in a sensitive area which Government requires, which society values, and which is best delivered through other arrangements, and for which the status of expert scientific committee best describes its role and function.

2.4.5 The reconstitution of advisory NDPBs as expert scientific committees is about improving transparency and accountability, and enabling Defra to have continued access to independent, authoritative and cost effective advice to support Government policies. If the ACP were to be replaced by an expert scientific committee, its advice would be provided routinely and on request to other interested Departments in the UK Government and to the Devolved Administrations.

2.5 The Government would welcome responses to the following questions:

Question 1

Do you support the Government's preferred option, to abolish the Advisory Committee on Pesticides, and replace it with an expert scientific committee, for the reasons explained?

Question 2

If you do not support the Government's preferred option, what is your preferred alternative and why?

Question 3

Do you have any additional points you would wish Ministers to consider before making their final decision?