

# **SUBMISSION TO THE DEFRA CONSULTATION ON THE IMPLEMENTATION OF EU PESTICIDES LEGISLATION**

## **FROM THE UK PESTICIDES CAMPAIGN**



### **WITHOUT PREJUDICE**

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4<sup>th</sup> May 2010

Dear Caroline Kennedy,

**Please note that any comments made within this submission to the DEFRA Consultation are Without Prejudice to any continuing legal proceedings.**

The UK Pesticides Campaign's submission to this Consultation is set out as follows:-

- Section 1: Introductory comments and overview
- Section 2: The most important comments, and a number of formal complaints, about this DEFRA Consultation
- Section 3: The most important comments, and complaints, regarding Chapter 6 of the DEFRA Consultation document
- Section 4: Other comments in relation to the Consultation document, including on various Articles (to be sent on separately if completed before the deadline)

## Annexes

1. The previous 97 page submission to the 2003 DEFRA Consultation (in full)
2. Article in the Guardian on 25<sup>th</sup> January 2010, including all the 64 comments posted in response.
3. The Executive Summary of the 149 page second Witness Statement involved in the legal case *Georgina Downs v DEFRA*.
4. Two photos of a resident's home which is within approx. 12 inches of a regularly sprayed field; and one photo of walkers on a footpath which is running through a field and who are about to be met by a tractor spraying the field.

## **SECTION 1: INTRODUCTORY COMMENTS AND OVERVIEW**

### **The UK Pesticides Campaign**

1.1 The UK Pesticides Campaign ([www.pesticidescampaign.co.uk](http://www.pesticidescampaign.co.uk)), is the only UK campaign that specifically exists to highlight the risks and adverse health, environmental and financial impacts of pesticides on rural residents and communities<sup>1</sup>, (as well as on other members of the public exposed). The UK Pesticides Campaign was founded in 2001 and over the last 9 years has produced extensive written and visual materials, as well as making a number of oral presentations, to highlight the UK Government's inherent fundamental failure to protect public health, in particular rural residents and communities, from exposure to pesticides sprayed in the locality to homes, schools, children's playgrounds and other public areas (and this applies to both acute effects and chronic long term adverse health effects). The visual materials produced included 2 videos entitled "*Pesticide Exposures for People in Agricultural Areas – Part 1 Pesticides in the Air; Part 2 The Hidden Costs*" to illustrate chemical exposure and the effects on people in rural areas. The work of the UK Pesticides Campaign is widely recognised not only in the UK,

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<sup>1</sup> I myself, as the founder and Director of the UK Pesticides Campaign, have lived next to regularly sprayed fields for over 26 years, and I therefore have the direct experience of living in this situation.

but also in Europe, as well as in other countries around the world<sup>2</sup> and has led to a considerable number of prestigious environmental awards and nominations.<sup>3</sup>

1.2 The UK Pesticides Campaign has been fully involved in the development of the European Community's Thematic Strategy for Pesticides, including the new European pesticides legislation consisting of: 1) Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides<sup>4</sup> (referred to in the DEFRA Consultation document as the Sustainable Use Directive or SUD); and 2) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market<sup>5</sup> (referred to in the DEFRA Consultation document as the PPP Regulation).

1.3 During the development of the aforementioned European Community's Thematic Strategy for Pesticides and the new European pesticides legislation (SUD and PPP Regulation), the UK Pesticides Campaign made representations on behalf of rural residents and communities affected by pesticide spraying in their locality at a number of meetings with various parties in both Brussels and Strasbourg, including: 1) the European Commissioner for Health and Consumer Protection<sup>6</sup>; 2) the European Commissioner for the Environment<sup>7</sup>; 3) senior European Commission officials in both DG SANCO and DG Environment, including officials working in the Cabinet's

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<sup>2</sup> The work of the UK Pesticides Campaign has been featured in national and international media since 2002. Examples of national media coverage include: in the Times, Financial Times, Guardian, Observer, Daily Telegraph, Sunday Telegraph, Daily Mail, Express, Independent; as well as on a number of BBC TV and radio programmes, ITV programmes, Channel 4 programmes and on Sky News. In addition a number of magazines have featured the work of the campaign including: Cosmopolitan, Marie Clare, Grazia, Red, Vogue, Ecologist, Resurgence, Lifescape, Science in Parliament, Country Living, amongst others. In relation to international media coverage, articles that have featured the work of the UK Pesticides Campaign have appeared in, amongst others, the US (including CNN), Canada, Australia, New Zealand, France, Germany, Portugal, India, and most recently The Beijing News in China (in February 2010).

<sup>3</sup> A list of awards and nominations can be seen at Wikipedia at: [http://en.wikipedia.org/wiki/Georgina\\_Downs](http://en.wikipedia.org/wiki/Georgina_Downs)

<sup>4</sup> Which came into force on 25<sup>th</sup> November 2009. The full text of European Directive 2009/128/EC is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0071:0086:EN:PDF>

<sup>5</sup> Which came into force on 14<sup>th</sup> December 2009 and applies from 14<sup>th</sup> June 2011. The full text of European Regulation (EC) No 1107/2009 is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0001:0050:EN:PDF>

<sup>6</sup> This meeting took place on 5<sup>th</sup> September 2006 in Strasbourg and was with the then Commissioner, Markos Kyprianou.

<sup>7</sup> This meeting took place in January 2007 in Brussels and was with Commissioner Stavros Dimas.

of the aforementioned Commissioners; 4) numerous MEPs from all political parties, including all the Rapporteur's and Shadow Rapporteur's for the Thematic Strategy, SUD and PPP Regulation. The UK Pesticides Campaign also corresponded with the EU Council, as well as the Permanent Representatives of all the 27 Member States, and has also made detailed submissions to, and had correspondence with, the European Food Safety Authority (EFSA), and its Plant Protection Products and their Residues (PPR) Scientific Panel, along with the PPR Panel's Working Group on the Toxicology of Pesticides. The UK Pesticides Campaign is also on the Expert Group on the Thematic Strategy on the Sustainable Use of Pesticides following an invitation by the European Commission. Therefore the UK Pesticides Campaign is fully aware of the contents of both the new PPP Regulation and Sustainable Use Directive.

1.4 Paragraph 2.15 of the DEFRA Consultation document states, "*Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent and to describe how the views of these people or organisations were gathered.*"<sup>8</sup>

1.5 As set out in paragraph 1.1 above, the people that the UK Pesticides Campaign represents is predominantly rural residents and communities, as well other members of the public, who are directly affected from exposure to pesticides sprayed in the locality to homes, schools, children's playgrounds and other public areas. However, it is important to stress that the UK Pesticides Campaign also receives reports from people who are exposed and suffer acute and/or chronic adverse effects from other pesticide sources, (eg. such as amenity use), and therefore the reports that the UK Pesticides Campaign receives is not solely related to agriculture.

1.6 The views of the residents and other members of the public that contact the UK Pesticides Campaign (whether by email, phone, post, or other) are always very clear, in that they are fully supportive of, and sign up to, the aims and objectives of the campaign, (and are often very pleased to discover that there is a campaign specifically

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<sup>8</sup> Paragraph 1.10 of the DEFRA Consultation document also refers to this, as it says, "*When responding, it would be helpful if you would make clear the nature of your organisation (if any), and the capacity in which you are responding (e.g. an officer representing an organisation or an individual) and provide an explanation of how the views of your members were gathered.*"

representing and fighting on residents' behalf). I previously provided anonymous examples of some of the supportive comments I have received in my submission to the 2003 DEFRA Consultation on pesticides<sup>9</sup> and which were taken directly from the emails I had received, many of which also detailed the individual's own acute and/or chronic adverse health effects (or that of a family member(s) or other(s), or on their domesticated animals/pets etc.) as a result of exposure to pesticides from crop spraying in their locality. I also submitted to the previous 2003 DEFRA Consultation the 2 videos referred to above in paragraph 1.1. The second video entitled "*Pesticide Exposures for People in Agricultural Areas –Part 2 The Hidden Costs*" featured, just as an example, a few of the individuals and families from all over the country reporting acute and/or chronic adverse health effects in rural communities surrounded by sprayed fields. It was clear from the content of the video that the residents featured were fully supportive of the aims and objectives of the UK Pesticides Campaign.

1.7 Over the last 9 years, since the launch of the campaign, residents and other members of the public have continued to contact the UK Pesticides Campaign to express their full support of the aims and objectives of the campaign, and therefore there has been a considerable number of emails received since the examples submitted to the 2003 DEFRA Consultation, as referred to in para 1.6 above. Due to the confidential nature of these emails then I have not included any with this submission. However, a recent article I wrote for the Guardian newspaper in January 2010 resulted in 64 comments posted in response (64 posts apparently being a good response to an online article). The majority of the posts were from members of the public, in particular other residents living near sprayed fields, and considering that the posted comments are publicly available comments and that they are similar to the types of supportive comments that I receive regarding the work of the campaign then I have included with this submission at Annex 2<sup>10</sup> the Guardian article and all the 64 comments posted in response. Please note that there is not one negative or adverse comment in

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<sup>9</sup> I am including my full submission to the 2003 DEFRA Consultation as Annex 1 to this consultation submission.

<sup>10</sup>The Guardian article is also available electronically at:- <http://www.guardian.co.uk/environment/cif-green/2010/jan/25/georgina-downs-pesticides%20http://www.guardian.co.uk/environment/cif-green/2010/jan/25/georgina-downs-pesticides%20>

the 64 comments posted, and the comments again clearly show that residents and other members of the public want the campaign I run to continue to represent them.

1.8 Therefore I would like to stress that this submission and the measures that the UK Pesticides Campaign proposes are (as they have been all the way through the campaign) formulated on the basis of everything that the campaign has collected/amassed over the last 9 years. This includes both in terms of scientific evidence, as well as the reports, comments and views that the UK Pesticides Campaign has continued to receive from other rural residents and communities, along with members of the public in general. This submission must not therefore be treated as an individual response from myself, but as a response from the UK Pesticides Campaign as a representative of rural residents and communities (as well as other members of the public) affected by pesticide spraying.

#### **Failings of current UK policy to protect residents (and the public) from pesticides**

1.9 Pesticides are hazardous chemicals. They can, as the European Commission clearly recognized when publishing the proposals for the new legislation under the Thematic Strategy (in July 2006), have various adverse effects on human health, including on the health of rural residents who are exposed to them. These effects may be acute (short-term) or chronic (long-term); and they can be systemic (eg. headaches, nausea, cancers etc.) or local (eg. skin or eye irritation, skin sensitization, irritation of the respiratory tract etc.)

1.10 In the European Commission's July 2006 document entitled "*Questions and answers on the pesticides strategy*" under the heading "*How do pesticides affect human health?*" the European Commission made a number of important statements about the exposure to pesticides for various exposure groups, including residents, as the EC stated:

*"Direct contact with the pesticide itself may occur during the time of application of the chemical but indirect exposure is the most common form of contamination. Residents and bystanders can be indirectly exposed to pesticides via spray drift. .. The effects of indirect exposure can be worse for especially vulnerable population groups such as children, the elderly or other particular risk groups (chronically sick people for instance).*

Long term exposure to pesticides can lead to serious disturbances to the immune system, sexual disorders, cancers, sterility, birth defects, damage to the nervous system and genetic damage.”

1.11 In the European Commission’s July 2006 “*Impact Assessment of the Thematic Strategy on the Sustainable Use of Pesticides*,” that accompanied the proposal for the new Sustainable Use Directive (SUD), the EC stated<sup>11</sup>:

**“Acute impairment of health** - Short-time exposure to pesticides can cause severe acute health effects, including diarrhoea, nausea, vomiting, abdominal pain, profuse sweating, salivation, blurred vision, irritation of skin and death are examples that have been reported in various publications.

**Chronic impairment of health** - Chronic health impairment results from a low but constant level and has a long-term character. Major incidents, in particular clear correlations between exposure and chronic effects, are not often recognised immediately since no obvious symptoms of poisoning exist.

There are various sources for continuous exposure, like the consumption of polluted water, pesticide residues in food, regular application of PPP over many years, or residential proximity to it and consequently direct exposure via air. People regularly or repeatedly exposed to or working with pesticides, may have a higher risk of incidence of cancer or other chronic diseases, birth defects, cancer in offspring, stillbirths and reproductive problems, skin rashes and disorders, disturbed enzyme and nervous system.

Under real life conditions, acute and chronic adverse effects associated with exposure to the common classes of pesticides can vary a lot for a given substance or substance class. Conversely, different substances or substance classes can cause similar symptoms. For example, the following have been reported for certain classes of insecticides:

- ORGANOPHOSPHATES can cause headaches, pain, weakness, numbness in extremities, dizziness, damage to memory, mood control, chest tightness, loss of coordination, uncontrolled urination, seizures, death due to respiratory failure;
- CARBAMATES can cause headaches, genetic mutations, vomiting, birth defects, dizziness, reduced fertility, seizures, kidney damage, shortness of breath, nervous system damage;

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<sup>11</sup> Cited at page 23.

- *PYRETHRINS and PYRETHROIDS can cause lack of coordination, deep lung allergy, convulsions, pneumonia, muscle paralysis, vomiting, asthma and death due to respiratory failure.*”

1.12 These are just some of the acute and chronic adverse health effects that can result from exposure to a given substance or substance class. Residents can of course be exposed (unknowingly) to all these classes of pesticides, along with other classes, (as well as to innumerable *mixtures* of these and other classes), repeatedly, throughout every year, and in many cases, like my own situation, for decades, and currently under the UK policy and approach residents have absolutely no protection at all from the risks, and related acute and chronic adverse impacts.

1.13 The EC Impact Assessment document goes on to again highlight the position of vulnerable groups where any health risks may be increased, as it states<sup>12</sup>:

*“Effects could be amplified for especially sensitive population groups, such as children (due to specific physiological and developmental factors), the elderly (due to their possibly compromised metabolic capacity), or other particular risk groups (immunologically compromised people, chronically sick, etc.)”*

1.14 For the last 9 years the UK Pesticides Campaign has collected reports of both acute adverse health effects, as well as chronic long-term effects, illnesses and diseases, in rural communities where residents live in the locality to pesticide sprayed fields. The acute effects reported are the same types of acute effects recorded in the Government’s very own monitoring system and include, sore throats, burning eyes, nose, skin, blisters, headaches, dizziness, nausea, stomach pains, burnt vocal chords and flu-type illnesses, amongst other things. The most common chronic long-term illnesses and diseases reported include various cancers, (especially breast cancer among rural women, as well as cancers of the prostate, stomach, bowel, brain, and skin), leukaemia, non-Hodgkins lymphoma, neurological conditions, (including Parkinson’s disease, Multiple Sclerosis (MS) and Myalgic Encephalomyelitis (ME)), asthma, allergies, along with many other medical conditions. It is important to stress that there are a number of cases where the individuals involved do have confirmation

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<sup>12</sup> Cited at page 23.



from either their doctor (or other medical professional) that the acute and/or chronic effects are caused by pesticides.

1.15 As I have continued to point out, reports of this nature have gone on for decades and cover all different age groups from the very young (including babies and young children) to the elderly. As I have also continued to point out, the UK Pesticides Campaign does not just receive reports from residents, but also from farmers, operators, ex-farm managers and other workers exposed to pesticides. The campaign also receives reports of adverse effects in dogs and other animals as well.

1.16 As said in paragraph 1.1 above, since early 2001, the UK Pesticides Campaign has continued to meticulously and accurately highlight the UK Government's inherent fundamental failure to protect public health, in particular rural residents and communities, from exposure to pesticides sprayed in the locality to homes, schools, children's playgrounds and other public areas (and this applies to both acute effects and chronic long term adverse health effects).

1.17 In summary, the current UK policy and regulations (including current procedures for risk assessment) are flawed, because, in particular, there has never been any risk assessment whatsoever for residents living near sprayed fields, and that, because of UK Government *inaction*, there has been a fundamental failure to protect the health of people (particularly residents) in the countryside from pesticides.

1.18 European Directive 91/414 (and UK equivalent legislation) regarding the authorisation of pesticides (and which is reflected in the new PPP Regulation) requires that *before* pesticides are approved for use, risk assessments are meant to be undertaken to establish that there will be "*no harmful effect directly or indirectly*" on human health. This must apply to all the necessary exposure groups, including residents. For example, in the aforementioned 2006 EC document entitled "*Questions and answers on the pesticides strategy*" it states, "*A directive of 1991 on the placing on the market of PPPs seeks to prevent risks at source. It requires that a very comprehensive risk assessment is carried out for each active substance and for the products containing the substance, before they can be authorised for use.*"

1.19 The factual evidence contained in the six Witness Statements involved in the legal case *Georgina Downs v DEFRA*, and which are based on the Government's very own documents, findings and statements, clearly confirms that the Government has fundamentally failed to:

- protect public health from pesticides, particularly rural residents;
- undertake any exposure and risk assessment for the long-term exposure for those who live, work or go to school in the locality to pesticide sprayed fields;
- act on the evidence of the risk of harm to human health, and further than that, act on the evidence of harm that is occurring, including in the Government's *very own monitoring system*;
- act on its *own findings* of exceedances of the safety limits set for exposure (the so-called Acceptable Operator Exposure Level (AOEL)), in some cases an *order of magnitude higher*, any exceedance of which on the Government's *own previously stated case*, would lead to immediate action of authorizations being refused (or trigger prohibition if already approved).

1.20 The factual evidence clearly confirms that there has never been any evidence to support the Government position of safety to residents (or school children attending schools near sprayed fields), just the Government's own continued assertions. The Government has not assessed residents exposure, and has continued to allow adverse effects to occur in residents and others exposed, (which of course includes vulnerable groups, such as babies, children, pregnant women, people who are already ill and who may be taking medication, amongst others), without taking any action to prevent the exposure, risks and adverse impacts occurring.

1.21 Considering I have already meticulously and accurately detailed the failings of the current UK policy and approach to protect residents (and the public) from pesticides in previous materials, in particular, the six Witness Statements produced for the legal case *Georgina Downs v DEFRA*, then I do not need to include all the very extensive and detailed factual evidence and arguments again here in this submission, as I would

just refer the Government, DEFRA, CRD and others, to those materials. (The electronic copies of which are now available on my campaign website at:- [http://www.pesticidescampaign.co.uk/witnessStatement\\_1.htm](http://www.pesticidescampaign.co.uk/witnessStatement_1.htm)).

1.22 However, I have included as part of the UK Pesticides Campaign's submission to this DEFRA consultation at Annex 3 the *Executive Summary* of the 149 page second Witness Statement<sup>13</sup> involved in the legal case as it provides in a relatively short and self-contained document a clear and accurate detailed summary of the failings of the current UK policy and approach to protect residents (and the public) from pesticides.

### **No balancing of interests when it comes to public health protection**

1.23 The fundamental concern of the current European Directive 91/414 regarding the authorization of pesticides is that human health must not be at risk of harm. Recital 9 of Directive 91/414 states, "*Whereas the provisions governing authorization must ensure a high standard of protection, which, in particular, must prevent the authorization of plant protection products whose risks to health, groundwater and the environment and human and animal health should take priority over the objective of improving plant production.*"

1.24 This is reflected in the new PPP Regulation that will replace 91/414, as there are a number of places within the text of the new PPP Regulation that explicitly state that the overriding primary objective of the PPP Regulation is the high level of protection of human health and the environment. For example, recital 24 states, "*The provisions governing authorisation must ensure a high standard of protection. In particular, when granting authorisations of plant protection products, the objective of protecting human and animal health and the environment should take priority over the objective of improving plant production. Therefore, it should be demonstrated, before plant protection products are placed on the market, that they present a clear benefit for plant production and do not have any harmful effect on human or animal health, including that of vulnerable groups, or any unacceptable effects on the environment.*"

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<sup>13</sup> The Executive Summary is also available electronically at:- <http://www.pesticidescampaign.co.uk/documents/execSummary/Executive%20Summary.pdf>

Article 1, paragraph 4 of the PPP Regulation states, *“The provisions of this Regulation are underpinned by the precautionary principle in order to ensure that active substances or products placed on the market do not adversely affect human or animal health or the environment. In particular, Member States shall not be prevented from applying the precautionary principle where there is scientific uncertainty as to the risks with regard to human or animal health or the environment posed by the plant protection products to be authorised in their territory.”*

1.25 The new Sustainable Use Directive is also clear that the protection of human health and the environment is the priority. For example, Recital 22 states, *“the objective of this Directive”* is *“namely to protect human health and the environment from possible risks associated with the use of pesticides.”* Recital 1 requires account to be taken of both precautionary and preventive approaches. It is highly noticeable that there is no mention anywhere in the text of the DEFRA Consultation document of these very important words regarding the establishment of the SUD.

1.26 Article 2, paragraph 3 of the SUD states that, *“The provisions of this Directive shall not prevent Member States from applying the precautionary principle in restricting or prohibiting the use of pesticides in specific circumstances or areas.”*

1.27 It is therefore clear from the text of both the existing European Directive 91/414 and the new European legislation consisting of the PPP Regulation and the SUD that there should be no balancing of interests when it comes to public health protection.

1.28 The evidence I produced for the legal case clearly showed that the UK Government has continued to base its decisions in relation to pesticides on the protection of industry interests as opposed to what is absolutely required as the number one priority of pesticide policy and regulation – to protect public health.

1.29 DEFRA has previously stated<sup>14</sup> that there is not supposed to be a trade off when it comes to the risks to health from pesticides with the benefits and that if there is

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<sup>14</sup> In a Joint Memorandum entitled *“Progress on Pesticides”* submitted by DEFRA and HM Treasury in October 2004 to an enquiry by the Environment, Food and Rural Affairs (EFRA) Committee.

scientific evidence that use of a pesticide may harm human health that is to be considered unacceptable, and that approval for use would be refused, whatever the benefits. However, paragraphs 195 to 206 of my second Witness Statement detailed the evidence to show that the UK Government has continued to adopt the improper approach of *balancing* harm to human health against the (supposed) benefits of pesticide use, in which the Government is accepting a degree of damage to human health on the basis that it is outweighed by other benefits (eg cost/economic benefits for farmers and the industry), rather than on the absolute protective approach that is required for the protection of human health.

1.30 The Government's inapt and improper balancing approach has continued in the text of the DEFRA Consultation document. For example, in paragraph 3.11 it states, *"An important principle is that the controls which are developed are proportionate to the risks being addressed. Inappropriate regulation or controls may compromise society's ability to control pests, weeds and diseases, with increases in food costs and reductions in quality and security of supply, without delivering any reduction in the risks associated with pesticide use...**In deciding the future of pesticide regulation in the UK, we will need to look at the improvements and benefits that can be achieved and balance these against the costs of implementing the proposed measures.**"*<sup>15</sup>

1.31 As detailed above, there can no balancing approach in a legal framework such as this, as the protection of public health must be paramount. In fact this was recognized in the DEFRA Consultation document just 2 paragraphs earlier, as the last sentence of paragraph 3.9 states, *"The primary aim of UK pesticide legislation is to ensure high standards of protection for people, the environment and animals."*

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<sup>15</sup> Other examples of the Government's improper balancing approach in the text of the DEFRA Consultation document include, in the 4<sup>th</sup> paragraph of DEFRA Minister Dan Norris' Foreword (on page 9) that states, *"In order to achieve the correct balance we want to gather views and evidence about the potential costs, benefits and feasibility of the wide range of implementation options presented."* Also, on page 132, in the Impact Assessment section under *"The benefits in qualitative terms,"* para 8.3 states, *"The UK already has well established control arrangements in respect of many of the areas covered by the Directive. Therefore the potential benefits to be gained from implementing the Directive are likely to be incremental improvements with regard to the protection of human health, water quality and the environment, and other associated positive societal effects arising out of a more sustainable use of pesticides. The potential improvement in overall environmental quality and incremental reduction in risks will need to be weighed against the potential costs arising out of implementation in order to determine the most appropriate and proportionate balance of measures to be adopted."*

1.32 Paragraphs 207 to 210 of my second Witness Statement pointed out that there is currently a clear mismatch and inconsistency between the Government's longstanding failure to protect people from passive exposure to pesticides and the Government's approach in other comparable policy areas that ended in a ban for public health protection. For example, the smoking ban in public places; BSE; asbestos and straw-burning, to name but a few. The latter, straw-burning, is a very good example of: a) the vociferous objection from the industry of any legislature measures being introduced, (which has always been the same sort of industry objection in relation to any measures being introduced regarding pesticides); and b) how inadequate measures, such as small buffer zones, as well as *voluntary* approaches, (however many times they are repackaged) failed to protect residents and communities. As I pointed out in paragraph 207(c) of my second Witness Statement, the industry (led by the NFU) claimed that it would damage farming if a ban on straw-burning came in, yet there was no apparent harm to the industry following the introduction of the legislation.

1.33 The Government has statutory conditions of use for the protection of certain animal species, wildlife, and the environment, but absolutely nothing to protect rural residents and communities from exposure to pesticides, the inherent health risks, and related acute and chronic adverse impacts. This has to now change.

### **Options for the protection of residents in the DEFRA Consultation Document**

1.34 As set out in the Statement in July 2009 by the DEFRA Secretary of State, Hilary Benn (at <http://www.defra.gov.uk/news/2009/090707b.htm>), this DEFRA Consultation is partly as a result of the legal case between myself and DEFRA (regarding pesticide exposure for residents and other members of the public), as Hilary Benn clearly said, "*The action brought by Georgina Downs, who I have met, has raised a number of issues concerning pesticide policy*" and "*We will therefore, in the light of the issues raised by Georgina Downs and the EU Directive, consult this autumn on:*

- *How to give people access to farmers' records of spraying activity near their properties;*

- *How to give prior notification of spraying activity to residents;*
- *Monitoring of how pesticides are being used;*
- *New training requirements for operators; and*
- *What else should be included in our National Action Plan."*

1.35 The DEFRA Consultation was delayed from its original stated time-line of last Autumn and was not launched until February 9<sup>th</sup> 2010.

1.36 This DEFRA Consultation is therefore part of the Government's review of its pesticide policy and approach, (which the Government was ordered to undertake in a Court of Appeal ruling in March 2009 (following the High Court Judgment and Order in November 2008) and which the Government publicly committed to continuing with irrespective of the subsequent Court of Appeal Judgment in July 2009<sup>16</sup>). As can be seen in the statement by the DEFRA Minister, Dan Norris, which is at the beginning of the Consultation document, a key part of the Consultation is therefore in relation to the use of pesticides near to where people live. The Consultation document contains a number of important measures regarding protection of residents and other members of the public. **I have briefly summarised these measures here, but they are detailed and considered in full in sections 2 and 3 of this submission below:**

- **Sustainable Use Directive (SUD): Article 12 – the option for the prohibition of pesticide use in areas used by the general public or by vulnerable groups as defined in Article 3 of Regulation (EC) No 1107/2009.** As fully detailed in section 2 below this includes residents exposed to pesticides sprayed in their locality. The distance of the area where the use of pesticides is prohibited would need to be substantial and must

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<sup>16</sup> Paragraph 3 of the COT paper for the meeting on 22<sup>nd</sup> Sept 2009 states, “Defra Ministers have confirmed that they wish to continue the review of policy in this area but that the precise detail of the referral for advice from the COT will need to be amended in the light of the Appeal Court Decision.” As part of the Government's policy review there are also two Working Group's co-ordinated by the Advisory Committee on Pesticides (ACP) that are reviewing the exposure, risks and adverse health effects to residents and other members of the public exposed.

include residential areas, schools, playgrounds, hospitals and other public areas, as there should not be any spraying in the locality of any of these areas;

- **PPP Regulation: Article 31 – the option for a new legal obligation for farmers and other pesticide users to provide residents with prior notification before pesticide spraying.** As fully detailed in section 3 below this needs to be at least 48 hours in advance as it currently is for the protection of bees;
- **PPP Regulation: Article 67 – a new legal obligation for farmers and other pesticide users to provide information to residents and others on the pesticides used.** As fully detailed in section 3 below this needs to be direct access as third party access is not acceptable, (and those requesting the information should certainly not be charged for it, as suggested in DEFRA’s consultation document at question 31).

1.37 These are all measures that the UK Pesticides Campaign has been calling for since the outset of the campaign at the beginning of 2001 and, as fully detailed in sections 2 and 3 below, it is critical that all these measures are mandatory and must be introduced into the statutory conditions of use for the authorization/approval of *any* pesticide. The UK Pesticides Campaign therefore supports amended versions of Option 3<sup>17</sup> (for the adoption of regulatory controls) for all the aforementioned measures to *finally* protect the health of residents and other members of the public from exposure to pesticides.

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<sup>17</sup> This is explained below in the relevant places in Sections 2 and 3, as the current wording for Option 3 in relation to Article 12, and the two provisions in Chapter 6 (prior notification and access to information) are not correct or satisfactory (and in fact Option 3 is missing altogether in relation to access to information). Therefore the UK Pesticides Campaign supports amended versions of Option 3 and has detailed this below.



## **SECTION 2: THE MOST IMPORTANT COMMENTS, AND A NUMBER OF FORMAL COMPLAINTS, ABOUT THIS DEFRA CONSULTATION**<sup>18</sup>

2.1 In my letter of 16<sup>th</sup> July 2009 to DEFRA Ministers, Hilary Benn and Dan Norris, I pointed out that if this Consultation was to yet again be undertaken by the Pesticides Safety Directorate (PSD), now the Chemicals Regulation Directorate (CRD), as it was in 2003, then it would again be subject to the same inherent problems as before.

2.2 The 2003 Consultations' right from the outset portrayed a biased and unbalanced view of the pesticides issue, as it focused only on the potential costs and negative implications for the farming industry and economics of production if mandatory measures for prior notification, access to information and no-spray zones were introduced. It did not address anywhere the substantial health and environmental costs and the existing devastating adverse impacts and burdens on residents and others in the countryside from the continued use of pesticides in agriculture, or the benefits and gains that would be realised if the proposals were to be implemented. The language used in the text of the 2003 DEFRA Consultation documents' and many of the statements made were factually inaccurate and seriously misleading to both farmers and the public.

2.3 There were 758 consultees on the original 2003 Consultee list published by DEFRA, where the vast majority were chemical companies and others who would be opposed to any new measures being introduced in relation to the use of pesticides. There was only a very small percentage (approx. 4%) of organic, environmental or other groups. People who actually live next to sprayed fields were not included on the list at all. Therefore rural residents and other members of the public only found out about the 2003 Consultation through National media coverage I managed to secure regarding my campaign.

2.4 Therefore the approach adopted by the PSD (now CRD) to the 2003 Consultations' raised serious questions about its adequacy, relevance and impartiality.

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<sup>18</sup> Excluding those in relation to Chapter 6 of the Consultation document as they are dealt with below in Section 3 of this submission.

2.5 I also pointed out in my aforementioned letter to the DEFRA Ministers that there were also serious questions about the accuracy and completeness of the data and the statistical analysis provided by the PSD of the overall number of responses received, along with the breakdown of those in favour of the proposals and those against, as there were various significant anomalies in the management and handling of the Consultation responses by PSD. I detailed this in both my submission to the Royal Commission enquiry in 2004, as well as in the original claim form for the Judicial Review application that was lodged in September 2004, (as Ministers and the CRD should be reminded that the original Judicial Review application was lodged as a result of the 2003 DEFRA Consultation). The arguments I set forth in relation to the PSD's management of the 2003 Consultation also led to the decision of the Information Commissioner (IC) in my favour in 2007 on the release of the detailed advice given by PSD to Ministers following the 2003 Consultations' on no spray zones and on access to information and prior notification. In the IC decision, the Commissioner found that *"the issues under discussion have potentially serious consequences for public health."*

2.6 As I pointed out in paragraphs 21 to 25 of my fourth Witness Statement, even though the PSD's (now CRD's) main priority is supposed to be to protect public health and the environment from pesticides, this obviously conflicts with the fact that its main customers/clients are its approval holders, (predominantly made up of the agro-chemical companies), and the fact that the PSD is required to meet full cost recovery for its operations, including from product applications and approvals. This conflict of interests was recognised by the Royal Commission on Environmental Pollution (RCEP) in its 2005 report. Paragraphs 5.50 to 5.58 of the RCEP report noted that the PSD's structure seemed to make health and environmental considerations subordinate to pest control.

2.7 The PSD/CRD is again undertaking this current (2010) DEFRA Consultation and from reading the documentation relating to it, many of the same inherent problems (as the 2003 Consultation) are already clearly evident. In line with paragraph 2.22 of the

Consultation document, the following sub-headings detail some of the most important specific comments and complaints about this current (2010) DEFRA Consultation.

**i) The non-inclusion of residents and the public on the DEFRA Consultee List**

2.8 The DEFRA Consultee list is again predominantly chemical companies and other industry bodies and organisations who would be opposed to any new measures being introduced in relation to the use of pesticides, and there is therefore again, only a very small percentage of organic, environmental or other groups. **Most importantly, yet again, people who actually live in the locality to sprayed fields were not included on the list at all.**

2.9 The non-inclusion of residents and other members of the public on the DEFRA Consultee list does not fit with the statements made in a number of places in the text of the Consultation document regarding wanting to hear from all stakeholders/interested parties. Some examples of this include<sup>19</sup>: in the 4<sup>th</sup> paragraph of DEFRA Minister Dan Norris' Foreword (on page 9) it states, "*The issues covered by this consultation are relevant to a broad section of society and we are hoping for participation from all interested parties, to contribute to an inclusive policy review.*" Paragraph 1.1 states, "*This consultation seeks participation from all parties to contribute to this review.*" Paragraph 2.9 under the heading of "*Who Has An Interest In The Consultation?*" it states, "*The fulfilment of these objectives is of general interest to a wide range of stakeholders; members of the public, all users of pesticides including home/garden products, local authorities and other public and government bodies, the agriculture and horticulture industries, businesses and organisations involved in amenity use of pesticides, trade associations, farming unions, businesses*

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<sup>19</sup> Other examples include: paragraph 2.4 that states, "*This consultation paper is Stage One of a two-stage consultation exercise and its purpose is to invite views to help inform policy decisions on the transposition of the SUD and, additionally, two measures relating to information requirements under the PPP Regulation. We are also seeking views on how the UK should operate charging arrangements in order to recover some of the cost of the work that is done under the legislation*" and paragraph 3.5 that states, "*This consultation is Stage One and addresses a range of new provisions introduced by the SUD, the policy to be adopted in applying two provisions contained in the PPP Regulation and possible future charging arrangements for work done under the legislation. We consider that it is appropriate to consult on the policy to be adopted for implementation before consulting further on the necessary transposing legislation.*" Also see other similar examples at paragraphs 1.12 and 3.36 of the DEFRA Consultation document.

*involved in the manufacture, supply and use of pesticides, and non-governmental organisations, consumer and rural groups.*” It is also recognised on page 128 of the Impact Assessment of the SUD under the heading “*Main affected Groups*” that this includes, “*Members of the public, especially those living, travelling, working or otherwise present in areas where agricultural, horticultural, amenity or other uses of PPPs are carried out.*” (This same recognition can also be seen on page 192 in the Impact Assessment relating to Chapter 6).

2.10 Therefore the non-inclusion of residents and other members of the public on the DEFRA Consultee list does not appear to comply with Criterion 4 of HM Government’s “*Code of Practice on Consultation*” that requires under Criterion 4<sup>20</sup> entitled, “*Accessibility of consultation exercises*” that, “*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*” It was clearly not in relation to rural residents and communities and members of the public in general, who did not receive any formal notification from DEFRA or CRD that this Consultation was taking place (aside from those who may have received notification about the consultation via an email from a CRD representative).<sup>21</sup>

2.11 The non-inclusion of residents and other members of the public on the DEFRA Consultee list is not only not in line with the statements made in the Consultation document, nor with Criterion 4 of HM Government’s “*Code of Practice on Consultation,*” it is also not in line with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, as in the absence of any formal notification from DEFRA or CRD that this Consultation was taking place, rural residents and other members of the public have again (as per the 2003 DEFRA Consultation) only found out about this

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<sup>20</sup> The requirements of Criterion 4 can be seen on page 223 of the DEFRA Consultation document.

<sup>21</sup> I myself received email notification via a CRD representative, although I am not sure whether any others aside from me were notified in this way, but if they were, then it could have only been a small number, as the Consultee list was the main form of formal notification that this DEFRA Consultation was taking place.

Consultation through information circulated by the UK Pesticides Campaign, along with others such as the Soil Association.

2.12 At the meeting I had with Dan Norris on 17<sup>th</sup> March 2010 and which was attended by a number of civil servants, including Dave Bench from the CRD, I pointed out that, yet again, as with the previous DEFRA Consultation in 2003, the current DEFRA Consultee list was biased and unbalanced, with no individual rural residents who actually live near sprayed fields on the list at all, nor seemingly any other concerned members of the public. Dave Bench said that the Consultee list was a “*standard list from the Cabinet Office*”<sup>22</sup> and therefore did not contain any individuals, only representative organisations. I pointed out that there were a number of names on the list that were “*...and Son*” (such as “*Albert Bartlett & Sons Ltd,*” “*James Tainsh & Son,*” “*John Sim & Son,*” amongst a number of others) and they are presumably family farming units, and therefore will definitely not be representative organisations, so Dave Bench’s explanation to the Minister on this point was not correct. In fact hardly any of those on the Consultee list could be classified as representative organizations, as individual chemical companies such as Monsanto and Bayer are only representing their *own* companies, not others. It was also incorrect of Dave Bench to say that there were no individual names on the list, as there are a few, including Charles River, Christie Elite, Jim Wells, amongst others.<sup>23</sup> I can only presume that these are individual consultants of some sort, but it is unacceptable for Dave Bench to say that the reason individual residents are not on the list is because there are no individual names on there *at all*, when there clearly are. I discussed this point with Dave Bench in a phone conversation on 30<sup>th</sup> April 2010 and whilst he attempted to give an explanation in relation to one of the individual names on the list,<sup>24</sup> (which I found rather vague and unclear), he did not give an explanation as to

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<sup>22</sup> At the time I took this to mean that it was a list supplied by the Cabinet Office, however, I have since clarified this with Dave Bench in a phone conversation on 30<sup>th</sup> April 2010 and he explained that what he had meant was that the CRD follow a Cabinet Office Guidance document, but that it was the CRD *themselves* that put together the Consultee list, based on the CRD’s database.

<sup>23</sup> Which also contradicts what is stated in paragraph 2.11 of the Consultation document that states, “*Although individuals are also being consulted we have not published their names...*”

<sup>24</sup> In relation to Charles River which Dave Bench explained was a consultancy company, but I was not clear whether he was saying that Charles River was the name of the company or just the name of an individual contact at the company.

the other individual names on the list. However, he did acknowledge that there were “*some anomalies*” in relation to the Consultee list, although again did not specify exactly what he was referring to in relation to that. Of course even if all the individual names on the list were from consultancy companies then they still could not be classified as representative organizations, which was Dave Bench’s original explanation to the Minister as to why residents and other members of the public were not included on the list, as he said it only contained representative organisations.

2.13 I would also point out that, as detailed in paragraphs 1.1 to 1.8 above, although it is widely recognised that the UK Pesticides Campaign represents rural residents and communities, as well other members of the public, who are directly affected from exposure to pesticides sprayed in the locality to homes, schools, children’s playgrounds and other public areas, the UK Pesticides Campaign was not included on the DEFRA Consultee list either, despite having been included on a number of previous Consultee lists in relation to other DEFRA Consultations, and despite the fact that I have continued to ask PSD/CRD to ensure that the UK Pesticides Campaign is always on the Consultee list for any Consultations regarding pesticides.<sup>25</sup> However, the UK Pesticides Campaign was invited to input to this DEFRA Consultation in a letter direct from the Minister, Dan Norris, but still I would again ask that DEFRA and CRD can please ensure that the UK Pesticides Campaign is included on any Consultee list for any future Consultations.

2.14 At the meeting I had with Dan Norris on 17<sup>th</sup> March 2010 I pointed out that in relation to the section of this DEFRA Consultation regarding access to information and prior notification (which is Chapter 6 of the Consultation document) it is covering almost exactly the same points as the previous consultation in 2003, and therefore DEFRA is asking people to again submit to something that they have already submitted to previously. The responses that residents and other members of the public submitted to the previous 2003 consultation in favour of the proposals were

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<sup>25</sup> In the phone conversation with Dave Bench on 30<sup>th</sup> April 2010 he said that anyone who asks to be consulted would be added on the list, which does not tally at all with the repeated requests I have made to the PSD/CRD about ensuring that the UK Pesticides Campaign is included on the Consultee list for any Consultations on pesticides and the fact that it was not on this current Consultee list.

clear, factual and highlighted their own real-life experiences of adverse health effects following exposure to pesticides and were therefore in favour of the “*long overdue*” controls to protect their own health and that of others living in rural communities.<sup>26</sup>

2.15 It is important to point out that a number of residents are simply not well enough to be writing submissions at all, let alone having to submit to *yet another* Government consultation which covers a number of the same things that have been consulted on before, including prior notification and access to information,<sup>27</sup> the use of pesticides in the locality to certain areas, such as homes, schools, children’s playgrounds and public areas. The UK Pesticides Campaign is therefore of the view that all the residents and members of the public who submitted to the 2003 DEFRA Consultation should have been notified about this current 2010 consultation so that they would have had the option of either, if well enough to, preparing a new submission, or if not well enough to, then they could have informed CRD that they would like to have their previous 2003 consultation submission also taken into account for this consultation.

**ii) No representation of rural residents on any of the pesticide working groups**

2.16 Following on from the previous point regarding the non-inclusion of rural residents and other members of the public on the DEFRA Consultee list, there is, and always has been, as I have previously and repeatedly raised with Ministers, no representation of rural residents and communities neither on any of the National Pesticide Strategy action plan groups, in particular the health group, nor on the Pesticides Forum or its sub-groups, as all these groups are dominated by industry bodies and Government agencies. Therefore there is simply no representation of rural residents and communities with the direct experience of living near sprayed fields, on any of these groups. This is despite the fact that the UK Pesticides Campaign has continued to express interest in representing residents on these groups, especially the human health group, as it specifically and directly involves exposure for rural residents and communities. **Therefore the non-inclusion of any representative**

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<sup>26</sup> The UK Pesticides Campaign bought the responses to the 2003 Consultation from the DEFRA library so has access to them.

<sup>27</sup> And which did not result in any action being taken, despite a publicly stated commitment by Ministers to introduce new legal measures, that was then never carried through.

**specifically for residents interests is yet again completely ignoring one of the most important Stakeholders in this issue. This is a very significant and serious omission and is highly discriminatory and so needs to be urgently rectified.**

2.17 This is even more critical considering that the DEFRA Consultation document repeatedly refers to the involvement of many of these action plan groups<sup>28</sup> in the revision and workings of the UK Pesticides Strategy as a result of the implementation of the new European pesticide legislation, including the SUD. As detailed in paras 1.1 to 1.3 above, the UK Pesticides Campaign is the only UK campaign that specifically exists to highlight the risks and adverse health, environmental and financial impacts of pesticides on rural residents and communities, (as well as on other members of the public exposed). The UK Pesticides Campaign is on the Expert Group on the Thematic Strategy on the Sustainable Use of Pesticides following an invitation by the European Commission and is keen to input into the various UK groups on the same basis, to ensure that the interests of rural residents is accurately and consistently represented.

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<sup>28</sup> For example, paragraph 5.3 states, “*The existing UK Pesticides Strategy with its supporting action plans contains most of the elements of a NAP as defined in the SUD. The work of the action plans includes: the setting of targets and identifying and taking action to deal with substances and/or practices which could compromise the Strategy’s aims; and promoting the use of integrated approaches. The current action plans were developed by stakeholder groups and take account of regional variances in priorities and approaches, and any revisions to the plans will do likewise.*” Footnote 25 states, “*The action plans which have been developed by stakeholder groups cover protection of human health, water quality, biodiversity, practice in the amateur and amenity sectors, and ensuring the availability of a sufficient range of effective and economic tools and techniques.*” Paragraph 4.3 on page 128 of the Impact Assessment for the SUD states, “*The UK’s National Action Plan (NAP), which will contain quantitative objectives, targets, measures and timetables for implementing the policies that are adopted, will be subject to annual reviews by the Pesticide Forum’s indicator group.*” Paragraph 4.3 on page 192 of the Impact Assessment in relation to Chapter 6 states, “*The Directive on the Sustainable Use of Pesticides (SUD), which is also the subject of this consultation exercise, will provide a mechanism for the review of any policy that is implemented under Articles 31 or 67 of the PPP Regulation. The Directive requires that Member States draw up National Action Plans (NAPs) to facilitate the implementation of the Directive. These NAPs are to include any measures concerning the provision of information to persons who could be exposed to pesticide spray drift – such as the measures covered in this impact assessment. The UK’s National Action Plan (NAP), which will contain quantitative objectives, targets, measures and timetables for implementing the policies that are adopted, will be subject to annual reviews by the Pesticide Forum’s indicator group.*” Other examples include, paragraphs 5.135; 5.240; 9.2 on page 136 of the Impact Assessment for the SUD, and Footnote 93.



**iii) Non-inclusion of recognised acute and chronic adverse health impacts of pesticides**

2.18 As detailed in paragraphs 1.9 to 1.15 above, the European Commission clearly recognized when publishing the proposals for the new legislation under the Thematic Strategy that pesticides can have various acute and chronic adverse effects on human health, including on the health of rural residents who are exposed to them. The EC clearly detailed many of these effects in the EC's detailed Impact Assessment that accompanied the proposal for the new Sustainable Use Directive (SUD). Therefore it is astonishing (although not particularly surprising knowing the Government's track record on the issue!) that in a 224 page Consultation document about how to implement new European pesticides legislation that aims to "*reduce the risks and impacts of pesticide use on human health*" that there is no reference anywhere in the DEFRA Consultation document to the recognised acute and chronic adverse health impacts of pesticides. It would appear that this highly noticeable omission is because DEFRA and the CRD continue to maintain that the approval system in the UK provides a "*high level of protection*" to human health. For example, in the 3<sup>rd</sup> paragraph of DEFRA Minister Dan Norris' Foreword (on page 9) it states, "*...it is clear that any new controls that might be introduced as a result of the consultation must build upon the high safety standards that we have here in the UK.*" Paragraph 6.2 of the Consultation document states, "*Government believes that the approvals regime for pesticides provides a high level of protection for humans, animals and the environment.*"

2.19 As detailed in paragraphs 1.16 to 1.22 above, and in more detail in the Executive Summary included as part of the UK Pesticides Campaign's submission to this DEFRA consultation at Annex 3, the UK Government has fundamentally failed to protect public health, in particular rural residents and communities, from exposure to pesticides sprayed in the locality to homes, schools, children's playgrounds and other public areas (and this applies to both acute effects and chronic long term adverse health effects). Therefore, as per the previous DEFRA Consultations in 2003, there is no real recognition in the current UK Consultation document of the real-life adverse impacts and burdens on rural residents and communities from crop-spraying

activities, which includes impacts not only on their health, but also on their environment, as well as related costs and other financial implications. It would again appear from some of the text in the Consultation document that the Government is mainly concerned with the *perceived* impacts and burdens, (including costs) that the implementation of the new European legislation may have on farmers, industry and other related business. (Further comments are made below in relation to this point).

2.20 As detailed earlier at paragraphs 1.23 to 1.31, it is clear from the text of both the existing European Directive 91/414 and the new European legislation consisting of the PPP Regulation and the SUD that the protection of human health and the environment is the overriding priority and therefore must take absolute precedence over the protection of industry, farming and other related business interests.

**iv) Non-inclusion of any calculations of the financial costs to residents in the two IA's**

2.21 As a direct result of not having recognised in the Consultation document the real-life adverse health and environmental impacts and burdens on rural residents and communities from crop-spraying activities then there is also no recognition or inclusion in either of the two Impacts Assessments of the related costs and other financial implications for residents. This is again a very significant and serious omission and not only does it mean that the overall figures in the Impact Assessments are highly unreliable and incomplete, it also means that there are a number of factually inaccurate statements made and conclusions drawn regarding the benefits for the public from introducing new measures and controls on pesticide use. For example, it is completely misleading to the reader for the Consultation document to imply that any benefits to those exposed would be merely related to an increase in “*public confidence*”<sup>29</sup> and “*less concern about being exposed to unknown chemicals.*”<sup>30</sup> This is simply not the case and statements of this nature are quite

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<sup>29</sup> This is stated in paragraph 8.5 on page 133 of the Impact Assessment of the SUD that states, “Conversion of such expected benefits to monetary terms is difficult as they are the combined outcome of a complex causal chain and it is difficult to estimate the value of the benefits for society, such as increased public confidence about the use of pesticides, enhanced biodiversity or better water quality.” Also at para 8.14 on page 133 of the Impact Assessment of the SUD that states, “Overall increased levels of training could result in greater public confidence in pesticides used in a professional capacity.”

<sup>30</sup> This is stated in the paragraph at the top of page 168 under the heading “*Health Impact Assessment*”.

frankly grossly insulting, disrespectful and patronizing to anyone who has suffered acute and/or chronic adverse health impacts as a result of exposure to pesticides.<sup>31</sup> In relation to this, it has to be said, that one of the most astonishing statements in the Impact Assessment for the SUD is in the paragraph at the top of page 168 under the heading “*Health Impact Assessment*” that states, “*The proposals have no implications for the NHS.*” Whoever wrote this statement (as well as those who signed it off for inclusion in the Consultation document) have demonstrated a shocking disregard for the actual real-life adverse health (and related financial impacts) of pesticides on any of those exposed and adversely affected. Government officials and advisors have been fully aware for years of the adverse health effects of pesticides on residents and other members of the public, including, in relation to acute effects<sup>32</sup>, in the Government’s very own monitoring system, (including in the PIAP and FOD reports, and in the manufacturers adverse incident survey reports) and it can be seen in some of the cases highlighted in the various FOD reports that hospital treatment and/or visits to GP’s had been required. For example (as can be seen at para 80(v) and footnote 144 of the second Witness Statement on pages 74; 81):

(i) in the FOD report for the year 2000/2001 a case classified as “*likely*,” stated, “*Complainant alleged she was over sprayed with pesticides whilst in her garden. Complainant immediately experienced itching and stinging. Complainant attended her local accident and emergency*”;

(ii) another case for the year 2000/2001 stated, “*Complainant alleged spray from spraying operations in an adjacent field drifted onto his property. Within one hour he*

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<sup>31</sup> There are a number of other statements of this sort in the DEFRA Consultation document, such as for example, paragraph 6.1 states, “*The UK Government has long held the view that there should be a high level of transparency and public access to information about the approval system for pesticides, believing that the availability of such information facilitates public understanding of the decision making process and may provide reassurance about the strictly regulated nature of pesticide approvals (subject to issues of commercial confidentiality).*” Also statements at paras 6.4, 6.7, 6.8, and on page 187 and 188.

<sup>32</sup> Acute effects are immediate effects that are usually short-term, but that can be mild, moderate or severe effects. Also acute effects can lead to permanent effects, as recognised in the 1990 British Medical Association report (*Guide to Pesticides, Chemicals and Health*, BMA (Edward Arnold) 1990, 1992), that stated that, “*Acute reactions usually occur while the chemical is being used or shortly afterwards. Most acute reactions last only a short time, without long-term complications. **However, a few people may suffer permanent damage of some kind.***” None of the cases in the Government’s monitoring system are ever followed up to see if the acute effects have resulted in permanent long-term effects, illness or disease.

*was experiencing a painful throat, difficulty swallowing, chest discomfort and redness to exposed skin. Complainant was admitted to hospital overnight for observation*";

(iii) a case classified as "*confirmed,*" in the FOD report for the year 2001/2002 stated, "*Complainant alleged she was over sprayed as she walked past a farm. Suffered from sore eyes and had to attend hospital*";

(iv) a case in the FOD report for the year 2003/2004 stated, "*Complainant alleged his wife was riding her horse on the public highway when pesticide drift from a nursery made contact with her skin and eyes causing an adverse reaction. Eyes became irritated requiring hospital treatment, diagnosed with chemical burns, requiring further treatment by GP*";

(v) a case in the FOD report for the year 2004/2005 stated, "*Complainant alleged that farmer had been spraying crops. Inhaled spray and suffered burns to the mouth requiring medical treatment at Hospital.*"

2.22 **Therefore these examples show that even just in relation to acute effects there are clearly related costs to the NHS when residents or other members of the public have to attend and/or be admitted to hospital, appointments with GP's, or other NHS doctors, specialists or consultants, and this is even before considering the NHS costs related to chronic effects, illness and disease as a result of exposure to pesticides (for which see further below at paras 2.26 – 2.43).**

2.23 **Therefore it is completely unacceptable for DEFRA/CRD to have made such a grossly inaccurate and highly misleading statement regarding there being no implications for the NHS from introducing new measures and controls on pesticide use. It is also in complete contradiction to the previous recognition by DEFRA officials in documentation formulated for Ministers consideration (by DEFRA's *Chemicals and Nanotechnology Division*) in 2006, that clearly recognised that introducing new measures and controls on pesticide use would have benefits, including health benefits, for the public, particularly residents living near farmland, as well as savings on managing health issues in the public**

sector (ie. the NHS). The relevant paragraph of the DEFRA document had recognised that the benefits of implementing new measures “will fall mainly on the public particularly residents living adjacent farmland. These benefits will be in terms of potentially improved quality of life including health. There will also potentially be associated benefits to the public sector in terms of savings on managing health issues.”

2.24 Also, the benefits of improved health care, as a result of access to the necessary chemical information, (in relation to being able to gain the appropriate medical assessment and treatment), was also recognized by DEFRA officials in the same document that stated, “Benefits are in potentially improved health care from being able to diagnose or eliminate any pesticide related effects on bystander health.”<sup>33</sup>

2.25 Incidentally, the UK Pesticides Campaign notes that the paragraph at the top of page 168 under the heading *“Health Impact Assessment”* states, *“The proposals should reduce the risks to the health of spray operators posed by use of PPPs by improving standards in use.”* This recognizes the health risks of adverse health impacts for spray operators, but there is no parallel recognition in either Impact Assessment for the health risks and related adverse health impacts to residents and communities or other members of the public from exposure to pesticides. **This is extraordinary considering that based on the Government’s own admission (as can be seen in the Government’s very own documents and therefore as DEFRA and CRD well knows) the highest reports of adverse health impacts received by PIAP each year are from residents.**<sup>34</sup> It is also extraordinary considering as highlighted in the aforementioned DEFRA statements (at paragraphs 2.23 and 2.24

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<sup>33</sup> It should be noted that DEFRA, ACP and PSD (now CRD) often incorrectly refer to both residents and bystanders under just *“bystanders”* as per the statement referred to here. As the UK Pesticides Campaign has continued to point out since the outset of the campaign in early 2001, residents and bystanders are two separate exposure groups and therefore should be referred to as such.

<sup>34</sup> In the July 2002 PSD paper, Paul Hamey pointed out that from the PIAP raw data, about three quarters of the ill-health incidents (that involved members of the public) can be categorized as *“residential”* where residents live adjacent to the treated area, and that the *“remaining quarter involved bystanders not in residential settings, but who were for example on footpaths or public roads. As some incidents involved more than one person, the total numbers of people involved is slightly greater than the number of incidents.”* He also confirmed that the highest number of ill health incidents regarding residents and bystanders related to field crop sprayers and he put this figure at 85%. See para 73 of the second Witness Statement at: [pages 70 to 72].

above), that DEFRA has previously recognised that introducing new measures and controls on pesticide use would have benefits, including health benefits, for the public, particularly residents living near farmland.

2.26 Considering I have already meticulously and fully detailed the examples of the external health and environmental costs of pesticide use in a section within the submission to the previous 2003 DEFRA Consultation, then I do not need to include all the very extensive and detailed cost estimates and statistics again here, as I am resubmitting the previous Consultation submission in full at Annex 1 so that it can be considered as part of this submission to the current 2010 DEFRA Consultation as well. The section in relation to the external health and environmental costs of pesticide use starts at paragraph 6.32 (on page 26) until paragraph 6.81 (on page 34) of the previous 2003 submission. These external costs included examples of the individual costs resulting from the health and environmental damage of pesticides to residents' and their property (see for example paragraph 6.62 on page 31 of the 2003 submission). Please note that as the examples in paragraph 6.62 were excluding actual figures, I had intended to provide some estimated costs for the section in paragraph 6.62 of the 2003 submission here in this document, but due to lack of time left to do so, then this will not now be possible to do. Also, considering that some of the estimated figures in the 2003 submission are from a few years ago then I had intended to provide an update of all the estimated figures to what they would be at the current time, but again due to lack of time left to do this, then it will not now be possible to do. However, in my letter of 16<sup>th</sup> July 2009 to DEFRA Ministers, Hilary Benn and Dan Norris I did update some of the estimated figures within the section entitled "*The external costs of pesticide use.*" I will therefore include the same comments again here.

### **The External Costs of Pesticide Use**

2.27 In the current pesticides policy, the Government does not factor in the full external costs of pesticide use, as there are substantial health and environmental costs in relation to the use of pesticides. For example, the cost in the UK *alone* of removing

pesticides from drinking water is estimated to be approx. £140 million per year.<sup>35</sup> It costs approx. a further £4.75 million to monitor pesticides at 2500 surface and groundwater sites.<sup>36</sup> In relation to food, it costs approx. £2 million a year in the UK to check for pesticide residues in food<sup>37</sup> and approx. £5.4 million for pesticide monitoring in both food and livestock together.<sup>38</sup>

2.28 The cost to the economy of just 3 chronic conditions that have been linked to pesticides in various studies: cancer (which is in excess of £4.5 billion per year in terms of NHS costs alone<sup>39</sup>), asthma (which is in excess of £850 million per year in terms of NHS costs alone and a further £161 million in social security costs<sup>40</sup>), and ME (which has been estimated to cost the nation £6.4 billion per year<sup>41</sup>), is almost £12 billion per year. (NB. As some of these figures are from a few years ago then the figure may be even higher now). Even if pesticides were only causing a small percentage of those conditions<sup>42</sup> (as of course there are a number of different causes for all those conditions with pesticides being just one) then the costs would still be substantial, particularly when added up with the other health costs of other related conditions<sup>43</sup>, along with all the environmental costs.

**2.29 Therefore when all the health and environmental costs are combined together then the cost to the economy and the nation as a whole would clearly**

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<sup>35</sup> Source: Jules Pretty.

<sup>36</sup> Source: *External Costs of UK Agriculture*, Jules Pretty, 1996. (NB. As this figure is from a few years ago it may be even higher now).

<sup>37</sup> Source: Pesticide Residues Committee (PRC) secretariat, pers comm, 2007.

<sup>38</sup> This figure was referred to in the submission I made to the 2003 DEFRA Consultations on crop-spraying, and therefore as it is a figure from a few years ago it may be a slightly different figure now.

<sup>39</sup> Source: <http://scienceblog.cancerresearchuk.org/2008/10/21/ncri-session-the-cost-of-cancer-care/> October 2008.

<sup>40</sup> Source: The 2001 Asthma Audit by the National Asthma Campaign, see <http://www.asthma-uk.co.uk/asthma4.htm>

<sup>41</sup> Source: Report published in May 2006 by the charity Action for M.E, see <http://www.afme.org.uk/pressreleases.asp?newsid=148>

<sup>42</sup> It is actually likely to be a fairly high percentage. The 2002 World Health Organisation: European Health report stated that 25 to 33 per cent of the total burden of disease in industrialised countries can be attributed to environmental factors. Therefore a considerable percentage of the health costs can be attributed to environmental causes, with pesticides as one of the major factors.

<sup>43</sup> It has been reported that the National Health Service has been told it has to make savings worth £20 billion. (Express, 27<sup>th</sup> April 2010). Therefore by introducing measures to protect public health from pesticides, this would obviously then help cut those NHS costs that are associated with pesticide related ill-health.

**total billions. Obviously it goes without saying that the personal and human costs to those suffering chronic diseases and damage cannot be calculated in financial terms. The significance of these consequences requires the adoption of a preventative approach, to make sure that the protection of public health is (which it currently is not) the overriding priority of the Government’s policy.**

2.30 The UK Pesticides Campaign has always argued from the outset of the campaign that the existing substantial health and environmental costs in relation to the use of pesticides *far outweighs* the cost of switching to non-chemical forms of agricultural production that do not depend on pesticides. The Government is not factoring in this fundamental point even though it *claims* that the protection of human health is meant to be the number one priority of the Government’s policy.<sup>44</sup>

2.31 The examples I have previously highlighted (and that are highlighted again below at para 2.91 under the heading “*The Prioritisation of Non-Chemical Methods*”) show that non-chemical methods can actually result in an *increase* in yield, and such methods would obviously eliminate the very significant health and environmental costs that currently exist in relation to the use of pesticides, (as well as eliminating the costs of the farmer or pesticide user having to buy the chemicals in the first place). This would result in significant economic and financial benefits and is the only real solution to protect public health and prevent any illnesses and diseases associated with pesticides, for now and for future generations, especially in relation to rural residents and communities (who are one of the highest exposure groups when it comes to agricultural pesticide spraying).

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<sup>44</sup> As I have set out this claim is not supported by any evidence and in fact quite the opposite as the existing evidence indicates that the Government is mainly concerned with the protection of industry and business interests rather than the protection of the public (eg. the two Witness Statements submitted by the Chief Executive of the PSD (now CRD) to the Court of Appeal on behalf of DEFRA, regarding DEFRA’s renewed application for a stay of the High Court Judgment and Order of Collins J. Both Mr. Wilson’s Witness Statements cited various reasons for *preserving the status quo* that were all notably related to *alleged* financial and economic impacts on pesticide manufacturers, farmers and distributors, or the impact on agricultural productivity, if there are any changes to the current policy and approach for pesticides and the related approvals system. Neither of Mr. Wilson’s Witness Statements displayed *any* concern whatsoever in relation to the protection of public health).



2.32 Therefore even if there was a rise in food prices from switching to a more non-chemical approach, (which the UK Pesticides Campaign does not agree would necessarily be the case as the evidence suggested for this is speculative), if consumers were aware that there would be a significant reduction in the external costs to human health and the environment from the non-use of pesticides, then consumers are highly likely to support a non-chemical approach, which ultimately combines the urgent need to protect public health and the countryside with societal and consumer demand for pesticide-free food.

2.33 As the UK Pesticides Campaign has previously pointed out, in 2003 the then DEFRA Minister for Food and Farming, Lord Whitty, stated that, “***Reducing reliance on pesticides is a priority, and we want to find alternative, more environment-friendly pest controls for farmers and growers.***”

2.34 However, this statement has not been backed up by any real action by the Government to move away from chemical dependency and the strong ties with the agro-chemical industry to the development of sustainable non-chemical farming methods.

2.35 The evidence that I obtained for my legal case against the Government showed that the real reason that the Government has so far refused to introduce mandatory measures for health protection has been to do with cost implications on the industry and on the Government itself. For example, there is an extraordinary statement in the *draft Partial Regulatory Impact Assessment* prepared by DEFRA’s *Chemicals and Nanotechnology Division*, in 2006, for Ministers consideration, that stated, “***New statutory measures will require significant reinforcement and extension of existing systems for inspection/penalty regimes and enforcement bodies and consequent increased costs to government. There is a risk that a large number of labour intensive and costly new legal obligations may result in non-compliance. A very prescriptive approach carries risks of civil disobedience action and potentially large number of prosecutions on fairly trivial grounds with consequent implications for the public purse.***”

2.36 Considering the risks inherent in the use of pesticides and the related acute and chronic long term adverse health impacts that can result from exposure (such as those highlighted earlier at paragraphs 1.9 to 1.15), then I would hardly describe the seriousness of this situation in relation to ensuring public health protection as being “trivial.” In addition, there is a very serious fundamental flaw in the Government’s continued reliance on the increased costs to the Government (and thus the use of public money) in introducing mandatory measures regarding pesticides. Even if going by the highest stated cost to the Government from the estimated figures that are set out for Option 3 in the Impact Assessment of the SUD (on page 126) which DEFRA/CRD has estimated as being £111.51 million, (along with an estimated cost of £176.99 million to industry) **then mandatory measures could have been introduced many, many, times over by now if public money had been managed responsibly, with the priority being given to policy areas that involve public health protection, such as this one. I am sure the general public would much prefer to see their money going on protecting human health than on some of the things that public money has been spent on over the years, and which in many cases has resulted in multi billions of pounds of public money being completely and utterly wasted.**

2.37 The UK Pesticides Campaign would like to highlight the following examples in support of this point:-

- A recent Whitehall report entitled “*The Office of Government Commerce Public Sector Procurement Expenditure Survey 2009*” which sets out how Whitehall’s £220 billion equipment budget is used, has shown that:-

Civil servants annually run up an £11 million bill for taxis; spend £57 million on office furniture; and £564 million on spin doctors. Consultancy fees have soared to £1.6 billion in one year alone for management advisers; while the annual information technology bill has hit £5.8 billion. Taxpayers have also paid £881 million for temporary staff, despite all the numbers of full-time salaried civil servants in Whitehall. Within the £5.8 billion cost for

information technology, £947 million was spent by the Department for Work and Pensions, which it has been reported “*has lost billions in benefit blunders and fraud*”<sup>45</sup>;

- Senior civil servants have spent £1 billion on taxpayer funded credit cards in just a year, according to recent statistics. It is reported that 141,000 high ranking public sector workers went on a “*huge spending spree*”, including “*dining at top restaurants on their “perk” cards.*” It has been reported that the combined sum spent since 2002 sits at a massive £5 billion, with more than 30 million individual transactions since the scheme began<sup>46</sup>;
- £200 million of public money was spent on doses of the swine flu vaccine that will “*never be used*”, as it has been reported that the order could not be stopped because “*officials forgot to add a cancel clause to the contract*” with the pharmaceutical company GlaxoSmithKline. It was reported that the Government took £200 million out of the capital budget to pay for this<sup>47</sup>;
- A Welsh language television channel funded with £100 million of public money showed nearly 200 programmes between February and March 2010 which were watched by no one. S4C officially recorded zero viewers on 196 of its 890 programmes, which is yet again a huge waste of taxpayers money<sup>48</sup>;
- In 2008 the Arts and Humanities Research Council handed out £41 million of public money to fund research projects. Only 82 per cent of that research was submitted, meaning more than £7.4 million worth of research was abandoned or submitted too late<sup>49</sup>;

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<sup>45</sup> Express, April 28<sup>th</sup> 2010, “*How civil servants waste your money by the billion*”.

<sup>46</sup> Express, 14<sup>th</sup> April 2010, “*Civil Servants £1 billion High Life*”.

<sup>47</sup> Express, February 4<sup>th</sup> 2010, “*£200 million bill for swine flu jabs we will never need*”.

<sup>48</sup> Express, March 11<sup>th</sup> 2010, “*£100 million TV channel nobody watches*”.

<sup>49</sup> Express, March 14<sup>th</sup> 2010, “*Taxpayers fund £330,000 grant for a panto PhD*”.

- The TaxPayers' Alliance<sup>50</sup> has previously calculated the cost of public sector capital project overruns. They identified that the project to overrun by the most is the NHS National Programme for IT, which is currently £10.4 billion over budget (or 450 per cent). It has been reported that the project will eventually cost £20 billion;<sup>51</sup>
- Cancelled College Building Programmes: In 2009, the Learning and Skills Council gave the go ahead to more college building programmes than they had money for – resulting in dozens of colleges having to write off over £220 million that they had already spent before the mistake was realized<sup>52</sup>;
- Department of Work and Pensions: Central Payment System: £88m over budget. The official figures were released in November 2008 by the National Audit Office but the projects are still ongoing. This is the computer system intended to pay all benefits. It is currently running 5 years late and £88 million over budget (up to £178 million from a planned £90 million)<sup>53</sup>;
- In 2008 the Government paid 1,350 foreign criminals a total of £3.4 million to leave the country, when they could have just deported them<sup>54</sup>;
- The new contract recently tendered for ministerial and civil service travel and hospitality will cost £2-£3 billion over the next four years, £500-£750 million a year<sup>55</sup>;
- The Rural Payments Agency has had to pay £280 million in fines to Brussels for mistakes and late payments in administering the distribution of funds to farmers in its first four years of operation<sup>56</sup>;

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<sup>50</sup> The Taxpayers' Alliance, Research Note 49: *"Out of Control: How the Government overspends on capital projects,"* 20<sup>th</sup> November 2009.

<sup>51</sup> Source: Financial Times (30/05/2006).

<sup>52</sup> Source: The Taxpayers' Alliance.

<sup>53</sup> Source: The Taxpayers' Alliance.

<sup>54</sup> Source: The Taxpayers' Alliance.

<sup>55</sup> Source: The Taxpayers' Alliance.

<sup>56</sup> Source: The Taxpayers' Alliance.

- The Pensions Transformation Programme, an IT project at the Department of Work and Pensions, is going to cost £598 million rather than the £429 million budgeted. This is a £169 million overrun.<sup>57</sup>

2.38 Also not to mention the use of public money to bail out multi-billion pound industries such as the banks, and now it would appear even the airline industry following the recent situation involving volcanic ash, as it has been reported that the UK Government may give the airlines millions in taxpayers money.<sup>58</sup>

2.39 Public (taxpayers) money is supposed to be predominantly used for providing sound policies that are in the public interest and are for the protection and well-being of the citizens in this country. *Surely*, public money is not supposed to be used for the protection of industry and business interests (nor as can be seen from some of the aforementioned examples, for the extraordinary use of expenses of civil servants), and it is just yet further examples of how the Government and the civil (public) service has lost touch with who they are supposed to be serving, which is supposed to be the public! In all the 9 years that I have been running the UK Pesticides Campaign, and in particular through the 6 years (to date) of the legal case against the Government over pesticides, there has been no sign at all of the Government, or the civil service, prioritising the protection of public health in relation to its pesticides policy and approach.

2.40 **As said above, mandatory measures for protecting residents and communities and the wider public from pesticides, could have been introduced many, many, times over by now if public money had been managed responsibly, with the priority being given to policy areas that involve public health protection, such as this one. Therefore it is untenable and inexcusable to continue to maintain that there is no money available to bring in mandatory measures, as there is, the Government just needs to stop wasting it and start spending it on protecting the health of the people that it is supposed to serve.**

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<sup>57</sup> Source: The Taxpayers' Alliance.

<sup>58</sup> Express, 28<sup>th</sup> April 2010, "*Taxpayers to bail out airlines for cloud crisis.*"

**Response to Question 39 under heading “General question on the Impact Assessment”**

2.41 Question 39 asks, “*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.*”

2.42 In response to the first question, no definitely not, for the reasons set out above, as well as in the following sections below. The fact that there is no inclusion or even any recognition in either of the two Impact Assessments of the real-life adverse health and environmental impacts and burdens and all related costs and other financial implications on rural residents and communities from crop-spraying activities is completely unacceptable. It is a very significant and serious omission and not only does it mean that the overall figures in the Impact Assessments are highly unreliable and incomplete, it also means that there are a number of factually inaccurate statements made and conclusions drawn regarding the benefits for the public from introducing new measures and controls on pesticide use. This has therefore resulted in a seemingly one-sided and unbalanced Impact Assessment, with the primary focus (as ever!) on the *perceived* costs to the industry and farmers if new measures and controls on pesticide use are introduced.

2.43 In response to the second question please see all the above comments in this section under the heading “*The External Costs of Pesticide Use*”, as well as the comments in the following sections below, as well as the cost examples section at paragraph 6.32 (on page 26) until paragraph 6.81 (on page 34) of the previous 2003 submission that I am resubmitting in full as part of this submission at Annex 1.

**v) Factually and legally incorrect interpretation of Article 12 Protection of specific areas**

2.44 Considering the importance of Article 12 in relation to the protection of rural residents and communities, and considering DEFRA/CRD’s factually and legally

incorrect interpretation (in a number of places) of the EU text for Article 12, then I am including here the UK Pesticides Campaign's comments on this Article, and the Impact Assessment relating to this Article, along with the responses to Questions 21 and 22.

2.45 The relevant text for Article 12 in the new European Sustainable Use Directive states that, "*Member States shall...ensure that the use of pesticides is minimised or prohibited in certain specific areas*" then under a) it says "*areas used by the general public or by vulnerable groups as defined in Article 3 of Regulation (EC) No 1107/2009...*"

2.46 The definition of *vulnerable groups* in Article 3 of Regulation (EC) No 1107/2009 is defined as, "'vulnerable groups' means persons needing specific consideration when assessing the acute and chronic health effects of plant protection products. These include pregnant and nursing women, the unborn, infants and children, the elderly and workers and residents subject to high pesticide exposure over the long term".<sup>59</sup>

2.47 **It is therefore very clear from the EU text that the option for the prohibition of pesticide use in areas used by the general public or by vulnerable groups (as defined in Article 3 of Regulation (EC) No 1107/200) includes residents.**

2.48 Yet at the recent Stakeholder meeting held on 10<sup>th</sup> March 2010 the meeting note states that, "*CRD clarified that measures under this article are not intended to include residences,*" and therefore CRD were saying that residents in residential areas are "*not*" included in this Article and are therefore not being considered in the context of this Article in the UK DEFRA Consultation. It would therefore appear that DEFRA and CRD have *already decided from the outset, prior to the Consultation* that Article 12 does not include residential areas. It is factually and legally incorrect for CRD to say that residents (and thus residential areas) are not covered by Article 12 when the text of Article 12 clearly refers to vulnerable groups as defined in Article

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<sup>59</sup> DEFRA and CRD should be well aware of the definition of vulnerable groups as it is cited in footnote 65 of the DEFRA Consultation document.

3 of Regulation (EC) No 1107/2009 and which includes residents. I have recently confirmed with the European Commission that the vulnerable groups definition is very clear and that it does include residents (as it clearly says it does), and of course it is areas where there are vulnerable groups, as defined in the new Regulation, that Article 12(a) is supposed to be related to. **Therefore residents in residential areas has to be included in this Article.**

2.49 Rural residents are a group with one of the highest levels of exposure to pesticides, as residents and communities are exposed on a long-term basis to mixtures of pesticides, repeatedly sprayed, in their locality, throughout every year, and in many cases, for decades. Obviously residents will also include other vulnerable groups, as defined in Article 3 of Regulation (EC) No 1107/2009, such as infants and children, the unborn, pregnant and nursing women and the elderly.<sup>60</sup> Therefore DEFRA/CRD's inaccurate misinterpretation of Article 12 would appear to be saying that none of these groups live in the locality to pesticide sprayed fields! In fact as can be clearly seen, the definition of vulnerable groups (in Article 3 of Regulation (EC) No 1107/2009), actually covers residents more than once, first in the fact that residents is included as a vulnerable group in itself, and secondly, in the fact that infants and children, the unborn, pregnant and nursing women and the elderly can of course all be residents. It is important to stress the fact that the area where babies and young children spend most of their time is at home (ie. from when they are born to before they go to school).

2.50 It would appear that DEFRA/CRD have intentionally misinterpreted Article 12 and the definition of vulnerable groups (which anyone can see includes residents!) in order to try and avoid the issue of agricultural pesticide spraying in the locality to residents' homes, as well as schools, children's playgrounds and other areas where vulnerable groups or other members of the public may be present. In fact it is highly noticeable that DEFRA/CRD have completely ignored agricultural pesticide spraying

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<sup>60</sup> And will also include other vulnerable groups which are not defined in Article 3 of Regulation (EC) No 1107/2009, and where the health risks are increased, including people who are already ill, and those taking medication (and where any interactions or synergistic effects between pesticides and the medication must be taken into account), amongst others.



altogether in the context of Article 12(a), as the Consultation document repeatedly refers to it only in the context of amenity use. For example, paragraph 1.597 under the heading of “Option 3” it says, “This option is based on prohibition of use in particular amenity situations...”<sup>61</sup> This is again factually and legally incorrect, as it does not say anywhere in the EU text that it is only related to amenity use of pesticides as the EU text just says, “use of pesticides is prohibited in areas used by the general public or by vulnerable groups...” **The “use of pesticides” would therefore include pesticides used for agricultural and horticultural spraying applications and there is nothing in the EU text to say it does not.**

2.51 In fact it is telling that whilst DEFRA/CRD have completely ignored agriculture in this Article for point a) and said that it is just related to amenity use, this is not the case for b) and c) which do include agriculture as well, which again shows the deliberate attempt to exclude agricultural pesticides spraying when it comes to exposure for the public and vulnerable groups at point a). I reiterate that there is nothing that says it is only for amenity use, it specifically says vulnerable groups, and it specifies residents in the definition of vulnerable groups, the wording of which is of course largely related to residents in agricultural residential areas as it clearly says in the EU text “residents subject to high pesticide exposure over the long term”. It is obviously widely recognised and acknowledged within Europe that when referring to “residents” in the context of pesticide exposure that it is related to residents living in the locality to pesticide sprayed crop fields. For example, as highlighted at paragraph 1.10 above, the European Commission’s July 2006 document entitled “*Questions and*

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<sup>61</sup> The same line can be seen on page 155 of the Impact Assessment of the SUD under the heading “Option 3” for Article 12, at paragraph 9.49. Other examples include, amongst others, paragraph 5.187, as well as paragraph 5.188 that says, “It is also interesting to note that compared to other Member States the UK appears to have a one dimensional approach to certain aspects of weed control in amenity situations (i.e. unwillingness on the part of some to consider using alternatives to chemical weed control).” Para 5.188 then goes on to say, “A number of reasons for this have been suggested, including: a lack of awareness of the risks associated with pesticide use and how to mitigate these amongst users or those who contract for the use of pesticides; lack of enforcement against bad practice; the requirement to deliver completely weed-free environments (some Member States tolerate degrees of ‘weediness’); and the fact that pesticides are often the cheapest method of control.” All the points underlined apply equally to agricultural use of pesticides as well. Also paragraph 8.24 of the Impact Assessment for the SUD on page 135 under the heading of “Benefits of the Proposed Measures” in relation to Article 12 “Protection of Specific Areas” it states that, “The major benefit of the measures proposed here will be to promote the uptake of relevant training and use of low-input pest, weed and disease control regimes in the amenity sector.”

answers on the pesticides strategy” under the heading “How do pesticides affect human health?” the European Commission stated, “Residents and bystanders can be indirectly exposed to pesticides via spray drift.” In the European Commission’s July 2006 “Impact Assessment of the Thematic Strategy on the Sustainable Use of Pesticides,” that accompanied the proposal for the new Sustainable Use Directive (SUD), the EC stated, “There are various sources for continuous exposure, like the consumption of polluted water, pesticide residues in food, **regular application of PPP over many years, or residential proximity to it and consequently direct exposure via air.**” In addition, the term residents has been defined in the EC Guidance Document for setting AOELs (revision 10) and which incidentally was largely drafted by PSD/CRD; and in the EFSA PPR Panel Opinion entitled, “*Scientific Opinion on Preparation of a Guidance Document on Pesticide Exposure Assessment for Workers, Operators, Bystanders and Residents*”<sup>62</sup> **Therefore residents has now been defined in a number of European documents, and in all the definitions for residents, it is related to people living in the locality to pesticide sprayed crop fields.** (In many cases spraying takes place within inches of a resident’s home, see for example the two photos included at Annex 4 of this submission which show a resident’s home within approx. 12 inches of a regularly sprayed field and so any spraying clearly takes place in the resident’s area, air and living environment etc.)

2.52 As said, DEFRA/CRD’s interpretation is therefore again factually and legally incorrect as Article 12 **does** include pesticides used for agricultural and horticultural spraying applications.

2.53 DEFRA/CRD’s misinterpretation of Article 12 appears to be deliberately setting this consultation up to suit the desired purpose of a) excluding agricultural spraying from Article 12(a) and therefore b) excluding the option for introducing any prohibition on pesticides sprayed in the locality to homes, as well as schools, children’s playgrounds and other areas where vulnerable groups or other members of

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<sup>62</sup> Which was on request of EFSA, Question No EFSA-Q-2008-261, adopted on 27 January 2010.

the public may be present.<sup>63</sup> DEFRA/CRD's misinterpretation of Article 12 is highly misleading as it means that those submitting to the DEFRA Consultation may not respond in relation to the agriculture sector as they may also misinterpret Article 12 as a result of the CRD leading them this way. (This is already evident by PAN UK's identical inaccurate misinterpretation of Article 12).<sup>64</sup>

2.54 Also, as a direct consequence of not including the agriculture sector in relation to Article 12 it means that there is absolutely nothing at all in the Impact Assessment for the options for this Article regarding agricultural pesticide spraying. For example, for Option 3, the inclusion of agricultural pesticide spraying would be for the prohibition of pesticide use in the locality to residents' homes, schools, children's playgrounds and other areas where vulnerable groups or other members of the public may be present. Yet all the Impact Assessment costs under the three Options for Article 12 (on pages 154 and 155) are all related to amenity use only.<sup>65</sup> This is completely unacceptable and is not in line with consultation requirements. Such a

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<sup>63</sup> Even if the Government thought its interpretation of Article 12 to be right, which as I have pointed out it is definitely not, DEFRA and CRD could still have included measures designed to protect human health beyond what it *believed* the Directive to be proposing. It can be seen in paragraph 5.192 that DEFRA/CRD has in fact done this elsewhere, as paragraph 5.192 in relation to the protection of "Conservation Areas" states, "Government does not believe that measures designed to protect sensitive plants, animals and ecosystems should be limited to the areas identified in the Directive. Projects developed under the Government's Pesticides Strategy have wider application, being directed at: identifying all species and habitats identified under the UK Biodiversity Action Plan as being adversely impacted by the use of pesticides and developing mitigation measures; raising awareness of indirect effects on particular bird species/promoting legal methods of pest control amongst users; and promoting links with initiatives such as the England Biodiversity Strategy and Campaign Against Illegal Poisoning with a view to rolling-out appropriate measures." Therefore the UK Government can of course go further than the Directive requirements for any Article. However, as already set out the Directive requirements in relation to Article 12 and the protection of areas where there are vulnerable groups, as defined in Article 3 of Regulation (EC) No 1107/2009, and which includes residents, is very clear and therefore DEFRA/CRD's interpretation of this Article and the vulnerable groups definition is factually and legally incorrect.

<sup>64</sup> PAN UK is of course not a representative of rural residents and communities and to my knowledge no one at PAN UK has any direct experience of living in the locality to pesticide sprayed fields, or has suffered any acute or chronic adverse health effects as a result of exposure to pesticides. PAN UK does not therefore have any specific focus on the protection of rural residents and so an identical inaccurate misinterpretation of the text of Article 12 and the vulnerable groups definition is not particularly surprising.

<sup>65</sup> This is despite the fact that paragraph 8.23 of the Impact Assessment for the SUD on page 135 under the heading of "Benefits of the Proposed Measures" in relation to Article 12 "Protection of Specific Areas" states that, "Reducing the risks of adverse impacts in sensitive human, plant and animal populations delivers unquantifiable benefits as described in paragraph 8.4". This would clearly apply to pesticides used in relation to any sector, including agriculture, horticulture, amenity, forestry, or other, (and considering that approx. 80% of pesticides used in this country each year are related to agricultural use then it of course definitely has to apply to the agricultural sector).

serious fundamental error has resulted in a flawed and defective consultation procedure and process. **I have already informed CRD that the CRD’s misinterpretation of the text of Article 12 could lead to non-compliance with the new Directive (which could then result in infraction procedures being taken against the UK), but also, depending on the outcome of Ministers decisions as a result of this Consultation, in another Judicial Review application being lodged.**

2.55 The UK Pesticides Campaign would like to briefly respond to a few other misleading statements in the DEFRA Consultation document regarding Article 12.

2.56 Paragraph 5.186 states, *“The existing control system recognises that certain individuals or parts of the environment may be more sensitive to pesticides than others. For example:*

- *The regulatory risk assessment process assesses the exposure of different sectors of the human population (including workers, the elderly and the very young) to pesticides (be it through carrying out or being exposed to applications, or the presence of residues in foodstuffs). It also assesses the exposure to key species (including birds, earthworms, bees and fish). **In all cases mitigation measures are put in place to ensure that levels of exposure of the most sensitive people and animals are within acceptable limits.**”*

2.57 The wording of this bullet point is misleading to the reader as it gives the impression that the assessment of exposure for the elderly and very young is included in a number of the exposure assessments, such as *“being exposed to applications.”* This is not correct, as the only assessment for those exposed to pesticides from spraying applications is the so-called *“bystander risk assessment”*. As detailed in the Executive Summary included with the UK Pesticides Campaign’s submission at Annex 3, this *“bystander”* model assumes a body weight of an adult weighing 60kg, which does not cover those of a lower bodyweight, eg. the bodyweight of a new-born baby (that could be present in a home or garden near to pesticide sprayed fields) might be something like one-twentieth of this amount at 3kg (and have a higher breathing rate and smaller airways) and so can have very significantly higher total

exposure per kg bodyweight per day. Babies and young children may spend significant amounts of time out of doors, in prams or (for older babies) playing on the ground in gardens. The evidence in the second Witness Statement produced for the legal case *Georgina Downs v DEFRA* showed that astonishingly the Government does not appear to have made any exposure estimates for babies and the very young for this specific exposure scenario. (See para 56(i) and (k) of the second Witness Statement [**pages 58-61**]). The exposure of the elderly is also not covered by the bystander risk assessment model.

2.58 In short, the existing short-term “*bystander*” model used by the Government (which is the only method the Government uses to assess the risks to public health from crop-spraying)<sup>66</sup> is based on dermal and inhalation exposure from a single pass of a sprayer, based on a person 8 metres from the spray boom, for five minutes only, or even less, as a previous paper by the Government regulators, the Pesticides Safety Directorate (now CRD), in fact shows calculations based on just *one* minute’s exposure rather than five minutes’ exposure<sup>67</sup> (see paras 7 and 8a of the second Witness Statement [**pages 6 to 7**]). Also, the *bystander* exposure assessment is predominantly based on exposure to only one *individual* pesticide at any time, which is a fundamentally flawed approach considering that agricultural pesticides are rarely used individually, but are commonly sprayed in mixtures (cocktails) – quite often a mixture will consist of 4 or 5 different products mixed together. Each product formulation in itself can contain a number of different active ingredients, as well as other chemicals, such as solvents, surfactants and other co-formulants (some of which can have adverse effects in their own right, even before considering any potential synergistic effects in a mixture(s)). The existing *bystander* model does not factor in the additional exposures which someone will receive if exposed to a mixture of pesticides at the same time. Various studies have shown that mixtures of pesticides

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<sup>66</sup> This *bystander* risk assessment is merely a mathematical *predictive* model based on *estimates* and *assumptions* rather than the actual real-life exposures occurring.

<sup>67</sup> The exposure to spraydrift for five minutes (or less) from the spray cloud at the time of the application *only* from a single pass of the sprayer, is then calculated/assumed by DEFRA to be at that level, only for 5 minutes (or less) each day, over just a 3 month period (or less), see footnote 71 of the second Witness Statement [**page 43**]). Yet residents are repeatedly exposed from various exposure factors and routes to *mixtures* of pesticides and other chemicals, throughout every year, and in many cases for decades.

(and/or other chemicals) can have synergistic effects.<sup>68</sup> (See para 56(g) of the second Witness Statement [pages 54-56]).

2.59 Therefore as said, the wording of the aforementioned bullet point at paragraph 5.186 is not factually correct and is misleading, at least in relation to the exposure assessment of “*being exposed to applications*” for the elderly and very young.

2.60 Further, the sentence in the aforementioned bullet point at paragraph 5.186 of the DEFRA Consultation document that states, “*In all cases mitigation measures are put in place to ensure that levels of exposure of the most sensitive people and animals are within acceptable limits*” is grossly inaccurate and very seriously misleading. There are no mitigation measures put in place in relation to residents’ exposure (that includes babies, children, pregnant women, people already ill, those taking medication, and the elderly etc.) as there is currently no exposure and risk assessment for a residents specific exposure scenario at all. As meticulously and accurately detailed in my second Witness Statement, when the PSD (now CRD) did undertake estimates for just a *limited* number of other realistic<sup>69</sup> exposure factors that are not currently included in the risk assessment for bystanders,<sup>70</sup> (namely exposure at 1 metre from the sprayer; 24 hour inhalation to vapour; and exposure of children to

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<sup>68</sup> A few examples include: 1) a study published in “*Toxicology*,” in January 2002 entitled, “*Interactions between pesticides and components of pesticide formulations in an in vitro neurotoxicity test*,” by J.C. Axelrad, C.V. Howard, W.G. McLean; 2) a study published in March 2009 entitled, “*Parkinson’s Disease and Residential Exposure to Maneb and Paraquat From Agricultural Applications in the Central Valley of California*,” by Sadie Costello, Myles Cockburn, Jeff Bronstein, Xinbo Zhang, and Beate Ritz **and which found exposure to two pesticides within 500 metres of residents’ homes increased Parkinson’s Disease risk by 75%;** 3) Frawley JP, Fuyat HN, Hagan EC, Blake JR, Fitzhugh OG., Marked potentiation in mammalian toxicity from simultaneous administration of two anticholinesterase compounds. *J Pharmacol Exp Ther.* 1957;121:96-106; 4) Olgun S, Gogal RM, Jr., Adeshina F, Choudhury H, Misra HP. Pesticide mixtures potentiate the toxicity in murine thymocytes. *Toxicology.* 2004;196:181-195. (NB. A number of other studies are referred to within my sixth Witness Statement in a section entitled “*Combined/synergistic effects, accumulative toxicity.*”)

<sup>69</sup> In 2002, the Advisory Committee on Pesticides (ACP) asked the PSD to undertake new pesticide exposure estimates as a result of having recognised the realistic scenarios I had presented regarding exposure for residents living in the locality to pesticide sprayed fields.

<sup>70</sup> There are a number of different exposure factors that are relevant for rural residents and communities. These include long term exposure to pesticides in the air, exposure to vapours, which can occur days, weeks, even months after application, reactivation, precipitation, pesticides transported from outdoor applications and redistributed into an indoor air environment, as well as long-range transportation, as studies have shown that pesticides can travel in the air for miles. Paragraph 56 of my second Witness Statement [pages 43-61], details all the exposure factors and routes that *are not covered* by the bystander risk assessment model, (but which would all be relevant for the exposure scenario of residents).

residues via skin contact and hand-and-object-to-mouth activities in neighbouring gardens after spraying) it found 82 examples of exceedances of the safety limits set for exposure (the so-called Acceptable Operator Exposure Level (AOEL))<sup>71</sup>, in some cases an *order of magnitude* higher, when *any* exceedance on the Government's *own previously stated case*, should have triggered a ban/prohibition.

2.61 Yet despite the results obtained, astonishingly no action was taken to revoke approvals of the pesticides that were shown in the PSD's very own estimates to exceed the AOEL; no further estimates were carried out on all the other pesticides approved for use at that time, and nor has this been done subsequently; and no change was made to the *bystander* assessment model. **Further still, evidence in my second Witness Statement shows that it seems that Ministers were not even informed by officials of these very serious AOEL exceedances (in some cases by 20 or 30 times over).**<sup>72</sup>

2.62 It is important to stress the fact that these AOEL exceedances were based on each exposure factor *individually*, as the Government's advisors, the Advisory Committee on Pesticides (ACP), and the PSD, wrongly calculated each factor in *isolation* and has failed to ever calculate (sum) exposure factors together in the exposure calculations, which is obviously essential to do in relation to the overall exposure scenario for residents. Therefore on the results shown in the PSD's own findings the AOEL would have been exceeded even further when calculating exposure factors together.

2.63 Therefore the PSD's estimated exceedances of the AOEL clearly demonstrate that products have been in use in the UK which have led to residents being exposed to levels greatly in excess of the AOEL, on a regular basis, year after year.

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<sup>71</sup> EC Directive 91/414 clearly specifies that the AOEL must not be exceeded, if it is, then authorizations must be refused, and if the AOEL exceedance is discovered *after* approval, it must trigger prohibition/revocation.

<sup>72</sup> It should be noted that these very serious and *illegal* AOEL exceedances were completely ignored by the Court of Appeal in its Judgment last year as a result of having *substituted* my evidence with that of the 2005 Government requested and funded RCEP report that had not identified them and therefore had no reference to them.

2.64 The fact that there has never been *any* assessment of the risks to health for the long-term exposure for those who live, work, or go to school in the locality to pesticide sprayed fields, is an absolute scandal considering that crop-spraying has been a predominant feature of agriculture for over 50 years. The absence of any risk assessment means that pesticides should never have been approved for use in the first place for spraying in the locality to homes, schools, children's playgrounds and public areas. Farmers cannot control pesticides once they are airborne (either at the time of application or subsequently) and so the exposure that rural residents and others receive is as a result of the *permitted* use of pesticides. Therefore as exposure for residents cannot be controlled, then it must be prevented altogether by changes to existing policies to focus on eliminating exposure.

2.65 **Therefore the most important action that must be taken is to prevent exposure for residents and communities (and other members of the public) by banning spraying and the use of pesticides in the locality to homes, schools, children's playgrounds and public areas and this must be introduced into the statutory conditions of use for the authorization/approval of any pesticide.**

2.66 Considering studies have shown that pesticides can travel in the air for miles then the distance of the area where the use of pesticides is prohibited would need to be substantial. For example, a reputable study in California found pesticides located up to **3 miles** away from pesticide treated areas and calculated health risks for rural residents and communities living within those distances. (Lee *et al*, 2002).

2.67 One study involving nearly 700 Californian women showed that living within a mile of farms where certain pesticides are sprayed, during critical weeks in pregnancy, increased by up to 120% the chance of losing the baby through birth defects. (Bell *et al*, 2001).

2.68 A study published in the Journal of the American Medical Association (JAMA) that confirmed acute illnesses in children and employees from pesticides sprayed on farmland in the locality to schools pointed out that a number of US states now require the prohibition of spraying in the locality to schools in an attempt to protect children



from exposure, including one state where the distance of the area where the use of pesticides is prohibited in the locality to schools is **2.5 miles**. (Alarcon *et al*, 2005).

2.69 **The areas where the use of pesticides is prohibited can of course still be managed and/or farmed using non-chemical methods of plant protection and pest and crop management. See further below under the heading “*The Prioritisation of Non-Chemical Methods.*”**

2.70 It is important to stress the fact that it is simply not acceptable for the risk management measures regarding exposure in the locality to homes, schools, children’s playgrounds and public areas to merely be “*the use of low-risk plant protection products*” and “*biological control measures*”. In relation to the use of low-risk plant protection products, this means nothing when pesticides are rarely used one at a time, but are commonly used in mixtures. This means that there could be 4 products classified as low risk and when mixed together could well result in a high risk to human health, aside from the fact that the Government insists that any pesticide sprayed is currently low risk to humans regardless of the substance or substance class, (which is not correct as a result of the existing policy and approach being fundamentally flawed, see above, and in more detail in the Executive Summary at Annex 3 and in full detail in the second Witness Statement). Therefore the suggestion in relation to the use of low-risk plant protection products, will not effectively change anything and is really just more of the same. In relation to the suggestion for “*biological control measures,*” this should absolutely have not been included in the definition for non-chemical methods in Article 3 of Regulation (EC) No 1107/2009, in the absence of defining what biological control methods it was referring to, as considering some, such as biopesticides, can still contain chemicals, then obviously it cannot in any way be defined as non-chemical. **Therefore neither the use of low-risk plant protection products nor biological control measures will do anything at all to mitigate the risks to human health that residents and other members of the public currently face from exposure to pesticides sprayed in the locality to homes, schools, children’s playgrounds and public areas.**

2.71 The only real solution to eliminate the adverse health and environmental impacts of pesticides is to take a preventative approach and avoid exposure altogether with the widespread adoption of truly sustainable non-chemical methods of plant protection and pest and crop management. This would be more in line with the objectives for sustainable crop protection, as the reliance on complex chemicals designed to kill plants, insects or other forms of life, cannot be classified as sustainable. **Therefore as said above at paragraph 2.69, the areas where the use of pesticides is prohibited can of course still be managed and/or farmed using non-chemical methods of plant protection and pest and crop management. See further below under the heading “The Prioritisation of Non-Chemical Methods.”**

2.72 Paragraph 5.194 of the DEFRA Consultation document states, *“The protection of agricultural workers is provided by mitigation measures which are imposed as a result of the regulatory risk assessment process (in particular controls on “re-entry” intervals to treated areas) and the good practice measures detailed in the Code of Practice (in particular Section 2 (training and certification), Section 3.4 (the COSHH assessment), Section 3.5 (preventing exposure to workers) and Section 4 (working with pesticides). The government believes that these controls work well and are proportionate to the risk. We see, therefore, no need to develop new controls in this area.”* The last bullet point of paragraphs 5.195, 5.196 and 5.197 of the DEFRA Consultation document, for the three Options, states, *“Recently treated areas. No additional controls proposed.”*

2.73 Whilst agricultural workers re-entering treated areas are able to protect themselves with the necessary information about the pesticides that have been used, the risks and related acute and chronic adverse effects, and will be wearing any appropriate PPE etc. bystanders (eg. walkers and others who may be using the public footpath through the treated fields) will not have any mitigation and risk management measures at all. Also as the CRD is well aware, bystanders can be present in the field during application and can be a metre or less away, (something which is not currently included in the risk assessment for bystanders, as the bystander model is based on a person standing 8 metres from the spray boom) as can be seen in the picture included

with the UK Pesticides Campaign’s submission at Annex 4 (and that was also before the High Court and the Court of Appeal). The photo shows a number of walkers on a footpath which is running through a field and who are about to be met by a tractor spraying the field. **Under the existing policy and approach people in this situation currently have no protection at all, and neither do dogs or other domesticated animals that may also be present in the field during and/or after application. Therefore there is definitely a need to develop new controls in this area to protect public health.**

**Comments on the Impact Assessment Related to Article 12 Protection of specific areas**

2.74 I have already made some comments about the Impact Assessment related to Article 12 at paragraph 2.54 above, in that as a direct consequence of not including the agriculture sector in relation to Article 12 it means that there is absolutely nothing at all in the Impact Assessment for the option for this Article regarding agricultural pesticide spraying, namely the prohibition of pesticide use in the locality to residents’ homes, schools, children’s playgrounds and other areas where vulnerable groups or other members of the public may be present. All the Impact Assessment costs under the three Options for Article 12 (on pages 154 and 155) are all related to amenity use only and I have already pointed out in paragraph 2.54 that this is completely unacceptable and is not in line with consultation requirements. For comments and complaints regarding the non-inclusion of any calculations of the financial costs of pesticide use to residents in the two Impact Assessments in general (ie. not just related to this Article) see the earlier section at paras 2.21 to 2.43, as well as the cost examples section at paragraph 6.32 (on page 26) until paragraph 6.81 (on page 34) of the previous 2003 submission that I am resubmitting in full as part of this submission at Annex 1.

**Responses to Questions 21 and 22 regarding Article 12 Protection of specific areas**

2.75 **Question 21 asks, “What is your preferred approach and why?”**

2.76 Paragraph 5.184 of the Consultation document states, “*The existing UK control regime broadly complies with the requirements of the Directive.*” This is simply not correct, as whilst the UK Government has controls under the statutory conditions of use for the protection of certain animal species, wildlife, and the environment, (as pointed out earlier at paragraph 1.33), there is absolutely nothing to protect rural residents and communities and other members of the public from exposure to pesticides, the inherent health risks, and related acute and chronic adverse impacts. This has to now change. Mandatory measures must be introduced to finally protect the health of residents and other members of the public from exposure to pesticides. These measures have to be at Governmental level from changes to its policy so that it is consistent for all rural residents across the country.

2.77 In view of DEFRA/CRD’s factually and legally inaccurate interpretation of Article 12 and the vulnerable groups definition, (as clearly set out in this section above), then there is not actually a specified Option within the three Options as they have been set out in the Consultation document that the UK Pesticides Campaign can support as such. The following are just a few comments on the three Options in turn.

2.78 **Options 1 and 2:** For the reasons set out in this submission, as well as in more detail in the Executive Summary at Annex 3 and in full detail in the second Witness Statement, as well as in the other 5 Witness Statements, (and in fact also in all the previous submissions produced by the UK Pesticides Campaign over the last 9 years), **Options 1 and 2 at paragraphs 5.195 and 5.196 are totally inadequate as neither option will be able to protect the health of vulnerable groups, including residents and communities, and other members of the public, from pesticide exposure.**

2.79 In short, 1) the “*continued use of the risk assessment process to identify and mitigate risk,*” will not change anything and thus will not provide any public health protection, as the current procedures for risk assessment in relation to the risks to public health from pesticide exposure are fundamentally flawed, as detailed above (and in all the existing aforementioned materials); 2) the reliance on existing or enhanced voluntary approaches again will not change anything and thus will not provide any public health

protection, as voluntary measures have existed for decades, have not worked, however many times they are repackaged, and are completely unacceptable in this situation. **Most importantly of all, DEFRA officials previously advised Ministers in June 2006 that, “...voluntary measures can only be used where there is no health risk to residents and bystanders...” Therefore DEFRA Ministers and officials were well aware that in the situation where the health risks and adverse effects are already accepted, (including in the Government’s own monitoring system), then voluntary measures were not an option and thus should never have been relied upon in the first place in a situation where public health is at stake.**

2.80 **Option 3:** In relation to Option 3, paragraph 5.197 of the Consultation document states, *“This option is based on prohibition of use in particular amenity situations or mandatory use reduction targets.*

- *Prohibit use in public areas or the imposition of a use reduction targets could be considered if voluntary approaches do not improve practice*
- *Conservation areas. Consider prohibition of use in these areas.*
- *Recently treated areas. No additional controls proposed.”*

2.81 As detailed above, the option for the prohibition of the use of pesticides would clearly apply to pesticides used in relation to any sector, including agriculture, horticulture, amenity, forestry, or other, and is therefore not just related to amenity use. The fundamental cause of there being no protection for residents and communities, as well as other members of the public, from pesticides, is with the Government’s policy and the lack of legal protection for residents and the public, (which is due to the lack of any risk assessment for residents and therefore the lack of any preventative measures, eg. most importantly prohibition of pesticide use in the locality to residents’ homes, schools, children’s playground and public areas etc., as well as prior notification and access to information, in the statutory conditions of use for the approval of any pesticide).

2.82 Therefore, based on what the UK Pesticides Campaign has set out above in relation to Article 12, the UK Pesticides Campaign would support the following **amended Option 3**:-

**Option 3 (amended)**: *“This option is based on prohibition of use in particular situations.”*<sup>73</sup>

- *Prohibit the use of pesticides in the locality to homes, schools, children’s playgrounds and other areas where vulnerable groups or other members of the public may be present (and which must be introduced into the statutory conditions of use for the authorization/approval of any pesticide).*
- *Conservation areas. Prohibition of use in the locality of these areas.*
- *Recently treated areas. New controls proposed for the protection of the public entering treated areas during and/or after application, (eg. walkers), as well as for the protection of dogs and other domesticated animals.”*

2.83 For the avoidance of doubt, I would reiterate that the aforementioned **amended Option 3**, is the **only** option that the UK Pesticides Campaign would support, in order to *finally* provide the necessary and long overdue protection for the health of residents and communities, along with other vulnerable groups, as well as other members of the public, from exposure to pesticides.

2.84 Question 22 asks, *“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?”*

2.85 The response to the first sub-question has already been answered in what is detailed above. Therefore the response to the second sub question is as follows.

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<sup>73</sup> Based on the existing evidence of the inadequacy of the current policy and approach in relation to public health protection, the UK Pesticides Campaign supports the prohibition of the use of pesticides in the locality to residents’ homes, schools, children’s playgrounds and public areas, as opposed to merely introducing mandatory use reduction targets which, quite simply, would not be adequate enough considering the health risks and related acute and chronic adverse health impacts from pesticide exposure.

2.86 As said above at paragraphs 2.69 and 2.71, the areas where the use of pesticides is prohibited can of course still be managed and/or farmed using non-chemical methods of plant protection and pest and crop management. In relation to the agriculture sector and farming, non-chemical methods would include rotation, physical and mechanical control and natural predator management. Similar methods could of course also be used for other sectors such as amenity, but for amenity other non-chemical methods could also be used such as steam treatments. (NB. It is not clear whether steam treatments were included in the Impact Assessment considerations for alternatives to pesticides, eg. in the table on page 153).

### **The Prioritisation of Non-chemical Methods**

2.87 In response to questions over the years about whether action should be taken to protect the health of people exposed to pesticides from crop-spraying, the primary concern of DEFRA, ACP and PSD (now CRD) has always been on the impacts on the farming industry if pesticides are not used. This again comes back to the point about *balancing interests*, instead of having the protection of human health from pesticides as the overriding primary objective.

2.88 One argument they have often put forward to highlight this is that they say that there are no alternatives to using pesticides and thus farmers would run the risk of pest damage to their crops if they don't use pesticides. For example, during a debate on BBC Radio 4's Woman's Hour in February 2007, the current Chair of the ACP, Professor Jon Ayres was challenged about the fact that the ACP accepts acute effects (and just classifies them as *non-serious*) and the presenter therefore asked Professor Ayres whether he agreed that there is a case for taking action in relation to acute effects. The presenter asked, "...if you accept that there is a harmful effect, the acute effect, isn't there then a case for banning spraying near where people live?"<sup>74</sup>

2.89 Professor Ayres said in response "*The idea of the Government was to put forward a Voluntary Initiative whereby farmers should warn and I accept fully that many do*

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<sup>74</sup> Source: Woman's Hour on BBC Radio 4 broadcast on 5<sup>th</sup> February 2007 available at: [http://www.bbc.co.uk/radio4/womanshour/03/2007\\_06\\_mon.shtml](http://www.bbc.co.uk/radio4/womanshour/03/2007_06_mon.shtml).

*not, local residents when spraying is about to occur. The fact is, one has to compare what are the alternatives and the alternatives at the moment would be not to spray and therefore to be, for the farmers to run the risks of pest damage to their crops.”*

2.90 I then reminded Professor Ayres that the principle aim of pesticide regulation is supposed to be the protection of public health and that that is meant to be the number one priority and take absolute precedence over any financial, economic or other considerations.

2.91 The fact is that there are alternatives to pesticides, but they are not being utilised by the Government, that has just continued to maintain the status quo and put chemical and industry interests over and above protecting public health. For example, one of the Government and industry arguments<sup>75</sup> that has been repeatedly made over the years in objection to the widespread adoption of non-chemical methods is that there would be a reduction in yield if pesticides were not used.<sup>76</sup> However there are various international studies that the UK Pesticides Campaign has come across in the course of the campaign and research that counter this argument and a few examples of these include:

- One review of over 200 food production projects involving simple, organic type techniques in different countries found that they resulted in **major yield increases, ranging from 46-150%**<sup>77</sup>
- Other case studies in the Philippines have demonstrated that sustainable agriculture can be practised in large scale; where yields do not necessarily

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<sup>75</sup> It is obviously not in the interest of pesticide manufacturing companies' to promote alternatives to pesticides, such as non-chemical methods, as the primary concern of the pesticide industry is with the sales of its products. (For example, sales of pesticides in the UK alone each year is approximately £500 million, and it has been reported that the value of the world pesticides industry grew a staggering 29% to \$52 billion in 2008). This was clearly seen in the vociferous objections to non-chemical methods and other alternatives to pesticides, as well as any reduction of pesticide use, during the EU negotiations for the new European Regulation and Directive.

<sup>76</sup> DEFRA/CRD has made this suggested argument again in the Impact Assessment of the SUD on page 138, as footnote 95 states, “*These costs and losses to farmers would arise from the need to replace some of their present pesticide usage with more expensive alternatives and the likely negative effect on yields of reducing pesticide use.*”

<sup>77</sup> Source: “*Reducing Food Poverty with sustainable agriculture: A Summary of New Evidence,*” ‘SAFE-World’ Research Project. J.N. Pretty and Rachel Hine, 2000.



drop without the use of chemical fertilisers and pesticides; **and that a rapid (even immediate) transition from chemical farming to sustainable agriculture is possible if correct technical principles are followed**

- One 15-year study comparing non-chemical farming methods to conventional methods concluded that yields from non-chemical farming equal conventional yields after four years. **And that's with no detriment to soil, water or human health**<sup>78</sup>
- In Cuba, many **non-chemical control methods have proved more efficient than pesticides**
- A previous study published results of 205 comparisons made of yields from organic and conventional farming systems in north America and Europe. The major finding of the study was, on average, and for a wide range of crops, yields within 10 percent (90 percent) of those obtained in conventional agriculture were achieved **without use of agro-chemicals**<sup>79</sup>
- Ethiopia has also been turning away from high-input, intensive agriculture to develop farming systems based on traditional and organic farming methods. It has been reported that the results have been impressive, with yields doubling, in some cases more, following the use of compost – yields of the common Faba bean increased five-fold from 500 kg/ha to 2,500 kg/ha. **The practical evidence of Project Tigray's increased yields has convinced the Ethiopian Government to abandon agrochemical-reliant agriculture and reorient national food and farming policy towards organic farming**
- Another report found that organic and agro-ecological farming in the Southern hemisphere produces dramatic yield increases, as well as greater crop diversity and greater nutritional content. For example: Tigray, Ethiopia (composted plots yield 3-5 times more than chemically treated plots), Brazil

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<sup>78</sup> Source: Rodale Institute of Kutztown, Pennsylvania, 1998.

<sup>79</sup> Source: G. Stanhill, 1989.

(maize yields increased 20-250%); and Peru (increases of 150% for a range of upland crops)<sup>80</sup>

- A study in Africa also showed an increase in yields from using organic and non-chemical methods. The article stated, "*The research conducted by the UN Environment Programme suggests that organic, small-scale farming can deliver the increased yields which were thought to be the preserve of industrial farming, without the environmental and social damage which that form of agriculture brings with it. An analysis of 114 projects in 24 African countries found that yields had more than doubled where organic, or near-organic practices had been used. That increase in yield jumped to 128 per cent in east Africa.*"<sup>81</sup>
- Researchers in Denmark found that a large-scale shift to organic agriculture could actually help fight world hunger while improving the environment.<sup>82</sup>

**2.92 These examples undermine the suggestion that non-chemical methods would necessarily result in a decrease in yields, and in fact a number of the aforementioned studies actually found a significant increase in yield. As said earlier, what such methods would do is to eliminate the very significant health and environmental costs that currently exist in relation to the use of pesticides, (as well as the financial costs of the farmer or pesticide user having to buy the chemicals in the first place). This would result in significant economic and financial benefits and it is the only real solution to protect public health and prevent any illnesses and diseases that could be associated with pesticides, for now and for future generations.**

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<sup>80</sup> Source: "*The Real Green Revolution – Organic and agro-ecological farming in the South*," N. Parrott and T. Marsden, Greenpeace, 2002.

<sup>81</sup> Source: <http://www.independent.co.uk/news/world/africa/organic-farming-could-feed-africa-968641.html>

<sup>82</sup> Source: "*Organic agriculture and food security*," Mark W. Rosegrant, Timothy B. Sulser, and Niels Halberg, 2007.

**vi) Misleading statements regarding non-chemical methods**

2.93 There are a number of rather misleading statements made in the DEFRA Consultation document regarding the safety associated with non-chemical methods. For example, paragraph 5.219 states, *“There are two main factors which prevent increased take-up of non-chemical methods: cost and hazard.”* Paragraph 5.219 goes on to state, *“It is possible that alternatives to chemicals may be more hazardous to the environment (such as burning) or more immediately hazardous to the general public (strimming may result in harm to those passing by if there are objects such as glass hidden in the grass.”*<sup>83</sup> This is an extraordinary statement, as realistically this scenario would be unlikely to occur and if it did then it would be a rare occurrence. In any event, strimming of course does not carry the same risks of the many acute and chronic adverse health effects that pesticides are recognised to cause including by the European Commission itself, (the EC statements of which I detailed earlier at paras 1.9 to 1.13). It should be pointed out that if DEFRA and CRD actually correctly acknowledged the risks and adverse impacts to the public of pesticides to the same degree as recognised by the EC, then DEFRA and CRD would then have to also correctly acknowledge that pesticides are of course *more hazardous* to residents, bystanders and other members of the public than non-chemical methods would be. As can be seen from the aforementioned examples there are various international studies that show that non-chemical methods can not only increase yield (or at least equal it) it does this with no impacts on human health or the environment. For example, the results found in the Pennsylvania study stated that, *“And that's with no detriment to soil, water or human health”* and the results found in the African study stated that, *“The research conducted by the UN Environment Programme suggests that organic, small-scale farming can deliver the increased yields which were thought to be the preserve of industrial farming, without the environmental and social damage which that form of agriculture brings with it.”*

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<sup>83</sup> Another example of this can be seen in the Impact Assessment of the SUD, on page 136, as paragraph 8.29 states, *“There is the possibility that any benefits accrued from the implementation of IPM in terms of risk or use reduction relating to pesticides may be off-set by increased risks to human health, or the environment, from the adoption of other methods of weed control, such as strimming or burning.”*

2.94 Therefore, as said it is very misleading and incorrect for DEFRA/CRD to have tried to cast doubt on non-chemical methods in this way in the Consultation document. There is no evidence to support such statements (ie. that non-chemical methods would be more hazardous than pesticides) and in fact it is highly noticeable that neither the text of the European Framework Directive nor the new European Regulation makes any such statements in relation to non-chemical methods. In fact quite the opposite as both pieces of new legislation clearly indicate that non-chemical methods are significantly safer for human health. For example, Article 14, paragraph 1 of the text of the new European framework Directive states, “*Member States shall take all necessary measures to promote low pesticide-input pest management, giving wherever possible **priority to non-chemical methods**, so that professional users of pesticides switch to practices and products **with the lowest risk to human health and the environment** among those available for the same pest problem.*” Recital 20 of the new PPP Regulation states, “*In certain Member States non-chemical control or prevention methods, which are significantly safer for human and animal health and for the environment, have been established and generally applied for certain uses.*” Article 50 paragraph 1 (a) of the PPP Regulation also refers to this in relation applying a comparative assessment as it states whether “*a non-chemical control or prevention method, already exists which is significantly safer for human or animal health or the environment.*” **Therefore it is completely unacceptable for the DEFRA Consultation document to continue to not accurately reflect what the text of the new EU legislation actually says.**

2.95 The Impact Assessment for the SUD also makes a number of misleading statements regarding non-chemical methods. For example, in the Impact Assessment of the SUD on page 138, footnote 95 states, “*These costs and losses to farmers would arise from the need to replace some of their present pesticide usage with more expensive alternatives and the likely negative effect on yields of reducing pesticide use.*” Where is the evidence to support this statement, as it can be seen from the aforementioned examples that there are various international studies that show that non-chemical methods would not necessarily result in a decrease in yields, and in fact a number of the aforementioned studies actually found a significant *increase* in yield

(of up to 250%). Also, following on from that, some of the figures made in the Impact Assessment appear to be based on the assumption that alternatives will be more expensive, but that may not necessarily be the case at all, apart from the fact that any costs related to using alternatives could well be offset by the savings to farmers and other pesticide users from not having to buy the chemicals in the first place, which could well result in them expending less. It does not appear that this point has been factored into the calculations that have been made. Therefore yet again the estimated figures that are given are highly unreliable and incomplete, and it has resulted in a seemingly one-sided and unbalanced Impact Assessment, with the primary focus (as ever!) on the costs to the industry and farmers if alternatives to pesticides are used.

2.96 The aim of the European Community's Thematic Strategy for Pesticides and the new Sustainable Use Directive was always very clear in that it was to reduce the risks and impacts of pesticides and to promote and encourage the use of non-chemical methods in order to reduce dependency on the use of pesticides. However, although the DEFRA Consultation document does refer to this aim<sup>84</sup> it has, as I have just pointed out in the aforementioned paragraphs, continued to try and cast doubt on non-

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<sup>84</sup> For example in: the third bullet point of paragraph 1.13 that states, "*The Directive aims to...[p]romote the use of integrated pest management and of alternative approaches or techniques such as non-chemical alternatives to pesticides*"; paragraph 2.2 states, "*The SUD will need to be transposed and implemented by the Member States by 25 November 2011. Its overall objective is to establish "... a framework to achieve a sustainable use of pesticides by reducing the risks and impacts of pesticide use on human health and the environment and promoting the use of Integrated Pest Management and of alternative approaches or techniques such as non-chemical alternatives to pesticides*"; paragraph 3.3 states, "*The Directive and the PPP Regulation are key elements of the European Community's Thematic Strategy for Pesticides, which meets a commitment made by the European Parliament and Council, when adopting the 6th Environmental Action Programme, to further reduce the impacts of pesticides, particularly plant protection products (ppps), on human health and the environment. The specific objectives of the Thematic Strategy are: a) minimise the hazards and risks to health and environment from the use of pesticides;...c) reduce the levels of harmful active substances including through substituting the most dangerous with safer (including non-chemical) alternatives; d) encourage low-input or pesticide-free cultivation...*"; paragraph 3.19 states, "*The Directive requires Member States to use National Action Plans (NAPS) to facilitate its implementation. These NAPs are to set quantitative objectives, targets, measures and timetables to reduce risks and impacts of pesticide use on human health and the environment and to encourage the development and introduction of Integrated Pest Management (IPM) and of alternative approaches or techniques in order to reduce dependency on the use of pesticides*."; paragraph 9.54 of the Impact Assessment of the SUD states, "*Article 14 of the SUD introduces a number of requirements for the implementation of Integrated Pest Management (IPM) by all professional users of pesticides. Each Member State is required to: Take all necessary measures to promote low pesticide-input pest management, with priority being given to non-chemical methods wherever possible...*"

chemical methods as a realistic and reliable alternative to pesticides and has simply not reflected what the text of the SUD actually says.

2.97 As said earlier, the only real solution to eliminate the adverse health and environmental impacts of pesticides is to take a preventative approach and avoid exposure altogether with the widespread adoption of truly sustainable non-chemical methods of plant protection and pest and crop management. This would be more in line with the objectives for sustainable crop protection, as the reliance on complex chemicals designed to kill plants, insects or other forms of life, cannot be classified as sustainable. **Therefore priority should always be given to non-chemical methods.**

*vii) Non-inclusion of the European text reference to organic farming*

2.98 Another very good example in which DEFRA/CRD have simply not reflected what the text of the SUD actually says is in the non-inclusion in the DEFRA Consultation document of the European text reference to organic farming. For example, Article 14, paragraph 1 of the new framework Directive states, “*Low-pesticide input pest management includes integrated pest management **as well as organic farming according to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products.**” Paragraph 4 of Annex 1 states, “*Notions on integrated pest management strategies and techniques, integrated crop management strategies and techniques, **organic farming principles**, biological pest control methods, information on the general principles and crop or sector-specific guidelines for integrated pest management.*”*

2.99 The EU text is not reflected accurately or completely in the DEFRA Consultation document, as there is no mention of organic farming at all in relation to Article 14 (nor in fact in the entire text of the 224 page consultation document).<sup>85</sup>

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<sup>85</sup> Except the word “*organic*” does appear once in the Consultation document, in paragraph 5.52, but that is merely as a reference to “*Garden Organic*”!

## **Conclusion in relation to Section 2**

2.100 For all the reasons set out in the comments and formal complaints detailed above in this section (section 2), the DEFRA Consultation procedure and process is flawed and defective, as it has resulted in many of the same inherent problems as the 2003 Consultation, along with a number of things specifically related to this Consultation (ie. the factually and legally incorrect interpretation (in a number of places) of the EU text, in relation to Article 12). I have already informed CRD that depending on the outcome of Ministers decisions as a result of this Consultation, it could lead to another Judicial Review application being lodged.

### **SECTION 3: THE MOST IMPORTANT COMMENTS, AND COMPLAINTS, REGARDING CHAPTER 6 OF THE DEFRA CONSULTATION DOCUMENT**

3.1 Please note that section 3 has had to be produced in haste due to lack of time left to complete this submission. It is therefore not necessarily as detailed as sections 1 and 2. Also some parts of the following have had to be left in note form only without the usual full detailed arguments and comments provided. (NB. DEFRA and CRD are aware of the difficulties I have had in producing this submission due to the recent damage to both my eyes). I was informed by Dave Bench of CRD that it was better to submit some sections in note form than not at all. Therefore I hope the following is clear, but if not please do contact me and I can provide any clarification required.

3.2 The following sub-headings detail some of the most important specific comments, along with a number of complaints, regarding Chapter 6 of the DEFRA Consultation document, which is in relation to the implementation of two provisions of the PPP Regulation<sup>86</sup>, which are:

- **PPP Regulation: Article 31** – the option for a new legal obligation for farmers and other pesticide users to provide residents with prior notification before pesticide spraying.
- **PPP Regulation: Article 67** – a new legal obligation for farmers and other pesticide users to provide information to residents and others on the pesticides used.

3.3 Considering I have already meticulously and fully detailed all the unarguable and justifiable reasons for the introduction of new legal obligations for both prior notification and access to information within the submission to the previous 2003 DEFRA Consultation, (which is pages 87 to 97 of that submission) then I do not need to include it all again here, as I am resubmitting the previous Consultation submission in full at Annex 1 so that it can be considered as part of this submission to the current

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<sup>86</sup> Paragraph 1.12 of the Consultation document states, *“This consultation seeks views on how the SUD should be implemented together with the policy to be adopted in respect of two provisions in the PPP Regulation.”*



2010 DEFRA Consultation as well. In addition, the arguments relating to these measures were also included in a number of other materials, in particular, the six Witness Statements produced for the legal case *Georgina Downs v DEFRA*, (the Executive Summary of which is also included as part of this submission to the current 2010 DEFRA Consultation at Annex 3), as well as in other materials that the UK Pesticides Campaign has submitted to the Government over the last 9 years.

3.4 I shall briefly summarise here the most important points in relation to the introduction of new legal obligations for both prior notification and access to information for residents.

3.5 There is currently a clear mismatch and inconsistency between the legislative requirement for the protection of workers and the lack of any protection for residents and communities exposed to pesticides from crop-spraying. Workers are legally allowed to know what chemicals they are using, the risks and adverse health effects, and will be required to wear protective equipment. Whereas, members of the public who may be only inches away breathing in the very same airborne droplets, particles and vapours that workers are required to have protection from, do not currently have any legal right to access information on what chemicals they are being exposed to, nor are they entitled to any prior notification<sup>87</sup>, nor are they likely of course to be wearing protective equipment while going about their business in their homes, gardens and elsewhere.

3.6 The UK Pesticides Campaign has continued to argue since the outset of the campaign in 2001, that mandatory requirements for both prior notification and access to information are absolutely imperative. Not only is it beneficial for residents and other

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<sup>87</sup> Footnotes 180 and 183 of my second Witness Statement [**pages 98-99**] detailed some of the risk and safety phrases and other toxicological information on pesticide safety data sheets, as aside from the warnings of local irritant effects the safety data sheets can also contain warnings in relation to systemic effects, as well as long-term chronic, cumulative and irreversible effects. These are on the actual safety data sheets themselves and are therefore chronic and permanent effects clearly recognised by the manufacturers of the products. Residents and others exposed who are not operators are not currently legally entitled to know this information and therefore will not be aware of the risks and potential adverse effects involved in *any* exposure let alone prolonged repeated exposures from living in the locality to pesticide sprayed fields. Therefore mandatory access to information and *prior* notification requirements should include access to the same information as an operator would see/know/be provided with, such as the hazard symbols and risk and safety phrases on the product label, the safety data sheets and any other associated information.

members of the public who are exposed to pesticides sprayed in their locality so that they are able to know what they are being exposed to, and in relation to prior notification to take any necessary action to try and reduce exposure as much as possible, it is also vital to be able to: 1) test for the presence of those particular pesticides in blood and/or body fat; 2) enable doctors to give the correct assessment and treatment of anyone who suffers adverse health effects (whether they be acute or chronic), as a doctor cannot possibly make a proper assessment of a patient's health effects unless this information is kept and provided; 3) feed back into the monitoring system, otherwise pesticide related ill-health statistics will never have a hope of being accurate or complete; and 4) provide crucial information for epidemiological purposes, as there is no way to trace exposure and correlate effects when there is no knowledge of what has been used and thus what people have been exposed to.

3.7 In 2004 DEFRA Ministers themselves gave an undertaking for **mandatory** not voluntary access to information and prior notification for residents, which was a stated commitment that was never carried through. (See paras 177 to 186 of the second Witness Statement [**pages 126 to 132**]).

3.8 Then in 2006, DEFRA officials advised Ministers to again introduce mandatory requirements for both prior notification and access to information. For example, in relation to access to information, documentation formulated for Ministers consideration by DEFRA's *Chemicals and Nanotechnology Division* in 2006 clearly recognized the benefits of direct access, as DEFRA officials stated, "*Benefits of direct access to spray records will mostly be for acute exposure where time is potentially critical in terms of determining correct treatment.*" (See footnote 254 of the second Witness Statement [**page 127**]). Also, the benefits of access to the necessary chemical information in relation to being able to gain the appropriate medical assessment and treatment was also recognized by DEFRA officials in the same document, as the preceding sentence to the aforementioned one stated, "*Benefits are in potentially improved health care from being able to diagnose or*

*eliminate any pesticide related effects on bystander health.*”<sup>88</sup> (See footnote 255 of the second Witness Statement [page 127]). However, Ministers did not follow their own advisors advice and instead preferred to rely merely on the industry led preference of voluntary action. (This showed just how determined Ministers have been to maintain the status quo). Yet voluntary measures have existed for decades, have not worked (as recognised by Mr. Justice Collins in the High Court Judgment who had considered the evidence set out in my Witness Statements carefully, unlike the Court of Appeal who largely ignored them) and are completely unacceptable in this situation.

**3.9 Most importantly of all, as highlighted earlier in para 2.79, DEFRA officials had advised Ministers in June 2006 that, “...voluntary measures can only be used where there is no health risk to residents and bystanders...” In this case not only is there a clear health risk, (which has been accepted by the ACP itself), but even further than there being a risk to health, there is, as can be seen in the Government’s very own monitoring system, solid evidence that residents have suffered harm to their health. Therefore DEFRA Ministers and officials were well aware that in the situation where the health risks and adverse effects are already accepted, voluntary measures were not an option. (See paras 209 to 210 and footnote 290 of the second Witness Statement [pages 143 to 144]).**

3.10 It is important to point out that the British Medical Association (BMA) advocated prior notification and access to information in its 1990 report; and one of the Government’s own advisory committees, chaired by Professor Solly Zuckerman, as far back as 1951, also advocated prior notification and access to information. As set out earlier at paras 1.9 to 1.13, the acute, and chronic adverse impacts of long-term exposure to pesticides, including for people living in the locality to sprayed fields, has been clearly acknowledged by the European Commission in the development of the new European legislation. Providing information to residents and other members of

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<sup>88</sup> It should be noted that DEFRA, ACP and PSD (now CRD) often incorrectly refer to both residents and bystanders under just “*bystanders*” as per the statement referred to here. As the UK Pesticides Campaign has continued to point out since the outset of the campaign in early 2001, residents and bystanders are two separate exposure groups and therefore should be referred to as such.

the public does not need to be overburdensome and in any event the benefits would far outweigh any burdens on pesticide users having to provide the information.

- 3.11 **Therefore there are simply no justifiable reasons for the UK Government to continue to deny this basic information right to residents and other members of the public exposed to pesticides, as people have a fundamental right to know the information necessary to make informed and knowledgeable decisions to protect their health and the health of their family from any harm. (Although obviously the fundamental point is that people should have the right not to be exposed to these chemicals at all in the first place).**

**PPP Regulation: Article 31 – option for a new legal obligation for farmers and other pesticide users to provide residents with prior notification before pesticide spraying**

- 3.12 In addition to the comments below please see pages 87 to 97 of the submission to the previous 2003 DEFRA Consultation, at Annex 1, which is to be considered as part of this submission to the current 2010 DEFRA Consultation as well, as the points made in the 2003 submission regarding prior notification are still the same as the current situation.

***The time-scale of the prior notification period***

- 3.13 In the UK there is a legal obligation in the statutory conditions of use to provide **48 hours prior notification** for beekeepers (in relation to protecting bees). This legal obligation is for products that may harm bees and that are labelled as *'harmful'*, *'dangerous'*, *'extremely dangerous'* or *'high risk'* to bees. However, pesticides that carry clear warnings on the labels and safety data sheets in relation to **human exposure**, such as *"Very toxic by inhalation," "Do not breathe spray; fumes; or vapour," "Risk of serious damage to eyes," "Harmful, possible risk of irreversible effects through inhalation," "May be fatal if inhaled"* etc. etc. do not have any comparable notification requirements in the UK as there is for bees. This is an extraordinary situation, that bees are given protection, but not humans. Considering 48 hours notice is workable for protecting other species then it should be the same for

protecting humans, especially the most vulnerable groups. This prior notification should apply to **any** pesticides applied, (as it is for aerial spraying in the UK), and not just some (especially considering pesticides are commonly used in mixtures which could result in increased toxicity due to synergistic effects etc.) It is important to reiterate that in documentation formulated for Ministers consideration by DEFRA officials in March 2006, the recommendation that went to Ministers regarding prior notification for residents was for a **mandatory requirement** to notify all those nearby residents who had requested it, prior to each spray event. Yet, despite this, DEFRA Ministers have so far continued to refuse to make such prior notification a mandatory requirement and has simply passed it back to the industry to deal with on a voluntary basis.

3.14 **The UK Pesticides Campaign supports the introduction of prior notification which needs to be at least 48 hours in advance of any pesticide spraying, the same as is required for the protection of bees. It should be noted that Mr. Justice Collins clearly recognised in the High Court Judgment<sup>89</sup> in November 2008 that, “It is difficult to see why residents should be in a worse position” than bees! Therefore it should be obligatory under the statutory conditions of use in the approval for all pesticides to notify residents at least 48 hours prior to any aerial or ground spraying application<sup>90</sup> to enable people to take the necessary precautions to try and reduce exposure as much as possible.**

### **Practical suggestions for prior notification**

#### ***Hotline phone system***

3.15 The DEFRA Consultation document, in particular in the Impact Assessment in relation to Chapter 6, has provided estimated figures for some of the more costly and

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<sup>89</sup> At paragraph 61.

<sup>90</sup> As pointed out in my letter of 16<sup>th</sup> July 2009 to DEFRA Ministers, Hilary Benn and Dan Norris, on page 92 of the submission to the 2003 DEFRA Consultation (included with this 2010 submission at Annex 1) regarding the prior notification period I stated that, “*The notification period should be 48 hours prior to any application, but should definitely be no less than 24 hours beforehand.*” I said a similar thing on page 95 of the submission where I stated, “*The notification should be no less than 24 hours in advance of any spraying application.*” However, the position that the UK Pesticides Campaign has taken for many years now (since after this 2003 submission) is that notification should be the same as it is for notifying beekeepers and therefore it should be no less than 48 hours in advance of any spraying application.

burdensome options in relation to prior notification, such as producing leaflets for distribution to local residents. Yet there is one option, for a hotline phone system that is not seemingly mentioned at all<sup>91</sup> in the Consultation document, even though it is the option that the UK Pesticides Campaign has continued to advocate to Government since the outset of the campaign as being the least burdensome and most likely the least costly option.

3.16 The section on page 94 of my 2003 submission entitled, *“Practical Options to consider for Providing Mandatory Notification and Information on the Chemicals to be Used to Residents and Members of the Public”* includes information in relation to a hotline notification system. However, please note the following point (in addition to the point highlighted in footnote 90 above) that I would like to elaborate on considering the document was written a few years back in 2003.

3.17 In relation to the hotline system I stated in the 2003 submission that *“Local residents and other members of the public could then phone in and get all the necessary information”*. However, it would be far more practical and appropriate the other way round, where the farmer has an automated hotline telephone system that is set to call residents (with all the relevant information as detailed in my 2003 submission) regarding the prior notification of the intention to spray any surrounding fields in the locality. To my recollection there is a system of this sort in place in New Zealand.

3.18 The hotline phone system should be one that is set up and funded by Government which can have a freephone call out number. There are similar systems in place for other things. For example, when discussing this option recently with Conservative

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<sup>91</sup> The only reference to telephone calls in the Consultation document is in relation to a farmer having to call each individual resident or household and thus making anything relating to a telephone seem extremely time-consuming to farmers and costly. For example, paragraph 6.12 states, *“while physical means such as posting leaflets or making telephone calls will be much more resource intensive”* and paragraph 6.13 states, *“Therefore, on the one hand, a grower in an isolated rural location with no concerned neighbours may incur no additional costs, while a grower on the urban fringe with a relatively large number of concerned neighbours may incur relatively low costs if he uses electronic means to provide information, or much greater costs if direct contact arrangements (face to face visits, leaflets or telephone calls) are necessary.”* This really is extraordinarily misleading, especially considering how many times the UK Pesticides Campaign has raised the suggestion of a hotline phone system to the Government over the last 9 years!

MP James Paice, he and his private secretary pointed out that the Environment Agency's Flood Alert system is a good example of how a hotline phone system can work in practice (and James Paice pointed out that he is signed up to receive the flood alerts himself). The hotline phone system could basically provide automated messages left by farmers or other pesticide users to local residents in the locality to where fields are to be sprayed to inform them, at least 48 hours in advance of any spraying application, and provide the information on what pesticides are to be used. This would therefore involve a farmer or other pesticide user having to record a short phone message (of approx. 1 min in length) to provide the necessary information consisting of a) the name or number of the field(s) to be sprayed; b) when (which as said should be at least 48 hours in advance of the spraying application); and c) with what combinations of products. As said a hotline system would not be an expensive system or burdensome and therefore it was simply not acceptable for DEFRA/CRD to have not included all the various different measures that could be utilised in the Impact Assessment, as to go with some of the most expensive measures and the most burdensome is not helpful in relation to trying to show that these measures do not have to be costly or burdensome and it just ends up making the industry, in particular farmers, think that providing prior notification is too expensive and time-consuming, which it absolutely does not have to be at all. It is of course this type of Government scare tactics that then leads to the industry announcing that it will cost them £176 million if all the regulatory measures proposed in the Consultation document were to be introduced!

3.19 Further evidence of this can be seen in the Table on page 211 of the Impact Assessment in relation to prior notification that gives a figure of 131,200 for total notifications (for 10% of adjacent properties requesting notification) for farms described as in the medium notification level and a figure of 154,700 for total notifications (for 10% of adjacent properties requesting notification) for farms described as in the high notification level. This is making it sound as if each farmer concerned would have to notify 131,200 and 154,700 times respectively, and yet if the notification is provided via a hotline phone system then in reality it would not mean that a farmer has to individually call each individual person or household, as all

the farmer would have to do is activate the hotline system and it would then telephone all those that the system is required to notify.

### ***Text messages***

3.20 In relation to text messages there are numerous business packages available which will allow the sending of bulk text at a reasonable price. Therefore this is also an inexpensive option and will also not be burdensome for a farmer or other pesticide user as it will just be the same information provided, as detailed above for the hotline phone system, and in one simple text message (taking approx. 1 to 2 mins to type) that would then be sent out to multiple recipients. This option is thus also not time-consuming. However, whilst most residents are likely to have a landline telephone (and therefore will be able to receive notification via the hotline phone system above) there are still a proportion of people who do not own a mobile phone. Therefore text messaging of course will not work for those particular residents and another option would have to be adopted.

### ***Email alerts***

3.21 In relation to email alerts, it would be based on how long it takes to type the email (approx. 2 mins), and then the cost would be nothing if the farmer/pesticide user already has a service provider that just charges by the month. For example we have a £14.99 a month charge which means there would not be any particular financial cost to any pre-existing computer owner who had a similar service provider charge rate to send out a bulk email. If it is pay-as-you-go (which is rare to have for those who have a computer these days) it would be the cost per minute that it would take to compose the email, but this would still be very low cost as it is just one email (that would provide the same information as detailed above for the hotline phone system), that is then again sent to multiple recipients in one go. Therefore this again would be an option that would not be expected to be anything like the charges that are included in the Impact Assessment for the leaflets. In relation to the time needed to initially set up the email alert system, it would include the time it would take to set up the original email list (ie. putting the addresses into an address book or folder) and then that's it.



This list could then be added to whenever a new person wants to be added on to be provided with prior notification. Therefore again the costs and time involved to farmers and other pesticide users would be minimal. However, again this option may not be the most practical, as there are still a proportion of people who do not own a computer. Therefore email alerts will not work for those particular residents and another option would have to be adopted.

### **Unacceptable attempts by DEFRA/CRD to avoid prior notification for residents**

3.22 There are a number of attempts by DEFRA/CRD within the Impact Assessment to avoid having to give residents prior notification. For example, paragraph 5.13 states, *“Illustrative examples of reasonable and appropriate measures would need to be described in guidance documents. **These measures could include the use of public information signs as well as, or instead of, direct notification of neighbours.**”* The same suggestion can again be seen at paragraph 7.1 on page 200 that states, *“This information is provided in order to prompt public consideration of the merits of using signs, either in addition to, or instead of advance notification and provision of spray records.”* Then again at paragraph 7.2 on page 202 that states, *“This impact assessment assumes costs are based on that level of activity. It also includes some cost estimates for the use of public information signs to notify the public in areas where pesticide spraying is due to take place which could be used in addition to, or instead of, direct notice to individual properties depending on the circumstances.”*

3.23 This is completely unacceptable and it is outrageous that this suggestion even appears in this Consultation document, as it yet again shows a complete (and most likely intentional) lack of understanding of the situation for many residents. As the UK Pesticides Campaign has continued to inform the Government, residents who are ill and who may be housebound and even bedbound cannot be expected to wander around fields to see signs to inform them of the prior notification to spray. Whilst signs may be important for bystanders or other members of the public intending to walk through fields that are to be sprayed, **signs in fields are completely and utterly useless as a way of informing residents who are IN their homes about intended**

**spraying in their locality.** The whole point for residents, and hence why it has now been included in the new PPP Regulation (as well as in Article 10 of the SUD) is for residents to be able to receive direct prior notification in their home, with the most practical means of doing so, (which the UK Pesticides Campaign has continued to advocate is in the form of a hotline phone system). This is what residents have been asking to be provided with for many years (as can be seen in the many submissions by residents to the 2003 DEFRA Consultation). Therefore this appears to be yet further attempts by DEFRA and CRD to deliberately try and prevent direct prior notification from being introduced in the UK.

3.24 **In relation to paragraph 7.1 regarding the suggestion of using signs in fields *instead of* the provision of spray records, considering Article 67 is for a new legal requirement for residents (or other members of the public) to be provided with access to the spray records then Member States have to comply with this provision. If the UK does not then it could lead to non-compliance with the new Regulation (which could then result in infraction procedures being taken against the UK), but also, depending on the outcome of Ministers decisions as a result of this Consultation, in another Judicial Review application being lodged.**

3.25 It is again clear from some of the statements made in the Impact Assessment regarding Chapter 6 that DEFRA and CRD is as ever mainly concerned with the *perceived* impacts and burdens, (including costs) that the implementation of the new provisions for prior notification and access to information may have on farmers, industry and other related business. For example, under the heading “*Disadvantages*” in the table on page 207 it says, “*Unequal distribution of costs within sectors. Higher impacts will fall on businesses with more interested neighbours.*” In the table on page 212 it states, “*Table 6 Estimate of Overall Industry Burden of Notification Costs (Using Leaflets),*” and on page 206 under “*Administrative Burdens*” it states, “*It may be necessary for the operator to make a record of the notification activities undertaken to provide supporting evidence of compliance and that this would be a new administrative burden.*” Also paragraph 6.12 states, “*It is clear that there could be a variable distribution of potential costs from one business to another, varying*

*from zero to potentially very high costs which may be considered disproportionate to any potential benefits.*”

3.26 Yet as ever there is no reference anywhere to the existing real-life adverse health and environmental impacts and burdens on rural residents and communities (and the public in general) from crop-spraying activities, which again as said earlier, means there is also no recognition or inclusion of the related costs and other financial implications for residents from not receiving prior notification and access to information on the pesticides used. The protection of human health is of far greater value and importance than the protection of industry finances and therefore, as said earlier, public health protection is supposed to be the Government’s main priority and concern in its pesticides policy and approach, and which it currently clearly is not.

**PPP Regulation: Article 67 – a new legal obligation for farmers and other pesticide users to provide information to residents and others on the pesticides used.**

3.27 In addition to the comments below please see pages 87 to 97 of the submission to the previous 2003 DEFRA Consultation, at Annex 1, which is to be considered as part of this submission to the current 2010 DEFRA Consultation as well, as the points made in the 2003 submission regarding access to information are still the same as the current situation.

**Direct access to information for residents**

3.28 In relation to the new legal obligation for farmers and other pesticide users to provide information to residents and others on the pesticides used, this has to be directly, as third party access is completely inadequate, especially in the event of an immediate poisoning when getting that information is critical and going through a third party would only add unnecessary and in some cases extremely dangerous time delays. As highlighted earlier, DEFRA officials have clearly recognized the benefits of direct access to information in documentation formulated for Ministers consideration by DEFRA’s *Chemicals and Nanotechnology Division* in 2006. Therefore it is not factually correct and is highly misleading of this consultation to not

provide for the option for direct access, which DEFRA/CRD of course should have done. Paragraph 6.31 of the Impact Assessment regarding access to spray records states, *“We do not have a rationale for measures on disclosing pesticide records that would go further than those described in the proposed scheme under option 2. Therefore, the approach under option 3 for spray records would be the same as for option 2.”* Yet there is a clear rationale and an Impact Assessment of a consultation is supposed to include all the possible options for consideration and assessment. Therefore the option for direct access, to have been provided on a mandatory basis, should have been included as **Option 3** (especially considering there are places elsewhere in the Consultation document where it says that the UK intends to go further than the Directive (eg. in relation to conservation areas under Article 12(b)). This is again a very significant and serious omission, and which again means that other parties submitting to this consultation will not necessarily know that there are other options that need to be considered, and what those options are, if it is not set out in the text.

### **Access to spray records via a third party**

3.29 Although the UK Pesticides Campaign supports direct access to the necessary chemical information for residents, I shall make the following points regarding access to spray records via a third party considering it is included in the Consultation document. In paragraph 6.24 it states, *“Although the Competent Authority will at all times have the right to seek any relevant information that it deems necessary, government does not believe that it would be a proportionate use of public funds to operate a blanket scheme in which any and all requests for information must be accepted by the Competent Authority. We have therefore included this issue in the consultation in order to seek views on what might be a reasonable policy for administering requests for pesticide records.”* This statement again simply does not fit with the requirement that the Competent Authority would have to do to comply with Article 67. The CRD simply would not be able to pick and choose who they provide information to, as it clearly states in the text of Article 67 of the new PPP Regulation the Competent Authority would have to provide it upon request. It is also

very important for the UK Pesticides Campaign to point out that there was no suggestion in the system which has already been approved by Ministers (in 2007, following a PSD pilot study) to be rolled out on a national scale<sup>92</sup> (and which was something which DEFRA relied on in court), of the CRD effectively “*selecting*” which residents (or other members of the public) the CRD would provide information to.

**3.30 Therefore this suggestion is simply not acceptable and again considering Article 67 is for a new legal requirement for residents (or other members of the public) to be provided with access to the spray records then Member States have to comply with this provision. If the UK does not, then it could lead to non-compliance with the new Regulation (which could then result in infraction procedures being taken against the UK), but also, depending on the outcome of Ministers decisions as a result of this Consultation, in another Judicial Review application being lodged.**

3.31 Incidentally in relation to the statement in paragraph 6.24 of the Consultation document that stated, “*government does not believe that it would be a proportionate use of public funds to operate a blanket scheme,*” see the earlier comments in paras 2.36 to 2.40 regarding the examples given where multi-billions of pounds of public money is completely and utterly wasted on an outrageously disproportionate scale. Obviously providing people with the information on what they are exposed to and potentially poisoned by is a far better use of public funds than many of those examples given.

3.32 As said earlier, there is a clear lack of recognition in the DEFRA Consultation document of the public health benefits to residents and other members of the public from receiving access to the information on pesticides used in the locality to homes, schools, children’s playgrounds and public areas<sup>93</sup>, such as those set out earlier in

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<sup>92</sup> But which has, yet again, as with all previous Ministerial commitments in relation to introducing measures for residents, not to date been implemented.

<sup>93</sup> And which as highlighted earlier, is in stark contrast to the previous recognition by DEFRA officials of the benefits of direct access to information as in documentation formulated for Ministers consideration by DEFRA’s *Chemicals and Nanotechnology Division* in 2006, DEFRA officials stated that, “*Benefits of*

para 3.6. Yet in stark contrast there is a clear recognition of the “*clear benefits*” for various agencies to receive the chemical information, in particular those in relation to monitoring watercourses and other pollution incidents (that are environmentally related as opposed to health related). For example, paragraph 6.10 of the Consultation document states, “*Public bodies like the Environment Agency (SEPA in Scotland, NIEA in Northern Ireland) and others with responsibilities for implementing and enforcing the requirements of the Water Framework Directive will derive a clear benefit from the availability of spray records as they regularly monitor watercourses for a variety of pollutants, including pesticide residues. If an incident is detected and farmers/contractors are required to keep publicly available records then that should greatly assist those bodies in identifying people who have contributed to any pollution event. – i.e. the records potentially have benefits to these organisations for enforcement, research and modelling purposes.*”

3.33 Yet all these same things “*identifying people who have contributed to any pollution event,*” “*enforcement,*” “*research*” and “*modelling purposes*” are the same when it comes to incidents involving the health of residents and communities, school children, or other members of the public. **Therefore it is highly noticeable the recognition that DEFRA/CRD gives to the importance of disclosing spray records when it comes to environmental incidents and adverse effects, but not when it comes to incidents and adverse impacts relating to human health.**

3.34 Yet this would appear at odds with the statement made by the DEFRA Minister, Dan Norris, at the beginning of the Consultation document where he stated, “*The new Plant Protection Products Regulation and the Sustainable Use Directive are intended to do even more to reduce the impacts of pesticides, particularly plant protection products, on human health and the environment. A key part of this consultation will therefore look at what approach to take in providing access to information about the pesticides that are used close to where people live.*” It also again does not appear in line with the objectives set out in the EU text, as Recital 44 of the new PPP Regulation states,

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*direct access to spray records will mostly be for acute exposure where time is potentially critical in terms of determining correct treatment.*” (See footnote 254 of the second Witness Statement [page 127]).

*“Provisions on record-keeping and information about the use of plant protection products should be established in order to raise the level of protection of human and animal health and the environment by ensuring the traceability of potential exposure, to increase the efficiency of monitoring and control and to reduce the costs of monitoring water quality.”*

### **Unacceptable proposal to charge residents and others exposed to access spray records**

3.35 Paragraph 7.5 of the Consultation document (on page 206) suggests that the costs of running the third party system in which the CRD provides residents and others with access to spray records is £200,000 p/a. This seems rather high and I cannot see how this can be an accurate estimate, as when discussions took place with stakeholders at the time the pilot study was taking place, I was given the impression by PSD that the costs were relatively low because the main staff member who was involved in the pilot project at PSD was there to provide the public with information on pesticides anyway, that was his main daily role (unless this has subsequently changed since the time that the pilot project took place).

3.36 Irrespective of the costs of running the third party system, the suggestion/proposal in the DEFRA Consultation document to charge residents (and others) exposed to pesticides to be able to access the information/records regarding what they have been exposed to is quite frankly a disgrace. For example, paragraph 5.12 states, *“Under option 2<sup>94</sup> the costs would fall primarily on Government in terms of responding to the public demand for spray records and taking enforcement action where these requests are not complied with. **The consultation will seek views on whether it would be appropriate for some or all of the costs to Government to be offset by charging enquirers a reasonable fee to cover the costs of handling these enquiries. This may reduce cost to Government of running the scheme and may also minimise the potential for vexatious enquiries.**”* It is supposed to be the polluter pays, not the polluted (and especially not those who are poisoned!) Many residents are ill and on

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<sup>94</sup> The same suggestion/proposal regarding charging enquirers appears in Option 3 as well (eg. in the table on page 206).

benefits, aside from the critical fact that, as said above, **Ministers had already approved a system to be rolled out nationally where there was no suggestion of residents having to pay to access the information on the hazardous chemicals they and their families are exposed to (and in the case of adverse effects, poisoned by!)** Therefore it would appear that this is just another way of the Government trying to prevent people being able to access this information and goes against the support from various official bodies in relation to the public being able to access this information (eg. the BMA, Zuckerman report, RCEP, amongst others).

**3.37 The suggestion in the Consultation document to charge enquirers should not be given any further consideration, as it is outrageous, and I do not think this is the type of charge that the European Commission were thinking of when drafting proposals for Member States to be able to charge for some of the work that is undertaken in relation to the new PPP Regulation and Sustainable Use Directive.**

#### **Length of time that all pesticide users should keep records for**

3.38 It is important to note that the requirement in Article 67 of the new European Regulation<sup>95</sup> is for professional users of pesticides to keep records of the pesticides they use for “*at least **three years.***” This is obviously completely inadequate, especially considering that in the UK records for health surveillance **for workers** are kept for **40 years** due to **potential chronic health effects** (eg. various cancers, neurological conditions or other conditions that can have a long latency period).

**3.39 Therefore it shouldn't be any different in relation to residents and others exposed over the long-term and at risk of chronic adverse effects and so this is another area in which the UK Government has the opportunity to go further than the Directive, especially to ensure that the record keeping requirements in the UK are consistent. Therefore the requirement should be for all professional users of pesticides to keep records of the pesticides they use for at least 40 years.**

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<sup>95</sup> The text of which is highlighted at paragraph 6.17 of the DEFRA Consultation document on page 106.



**Comments on the Impact Assessment Related to prior notification/access to information**

3.40 I have already made detailed comments about both Impact Assessments in the earlier section at paras 2.21 to 2.43. Therefore the following is just a few comments in relation to specific figures/assumptions given in the Impact Assessment for Chapter 6.

3.41 The Consultation document refers to the NFU's "*Good Neighbour Guide*" in a number of places (and it is also something that would be relied upon in Options 1 and 2). Yet as I have previously pointed out (eg. in the second Witness Statement) the Good Neighbour Guide has not practically achieved or changed anything and will not, as it is only voluntary and voluntary measures do not work. The leading statements made in the Consultation document and very highly questionable assumptions in the Impact Assessment for Chapter 6 are completely unacceptable, as DEFRA/CRD has just accepted some "*anecdotal*" information provided by the NFU (who of course are trying to convince the Government (as always) that farmers are giving prior notification and access to information and therefore that there is no problem). For example, paragraph 6.14 of the Consultation document states, "*The guidance in the Code and the Good Neighbour Approach are clearly influencing behaviour but we do not know to what extent.*" Para 5.4 of the Impact Assessment for Chapter 6 then states, "*A best estimate is that 25% of those who are asked (see Annex I, page 209 onwards for further information on assumptions) to provide this information may currently do so, but this could be an over or underestimate.*"

3.42 Based on the reports that have come in to the UK Pesticides Campaign over the last 9 years this is definitely seriously overestimated. The reality is very different in that residents predominantly report that they are: a) not provided with prior notification nor access to information; b) in many cases this is despite repeated attempts to the local farmers to request this information; c) and in a proportion of cases residents' still fail to obtain the notification/information even after approaching the HSE (who commonly say the farmer is "*not doing anything illegal*"; does not have to provide prior notification as there is currently no legal requirement for him/her to do so; and that considering there is also currently no legal obligation for a farmer to provide it,

then the HSE can only provide access to information to the resident with the express consent of the farmer concerned, which is often not forthcoming).

3.43 This is the reality, which can even clearly be seen in the Government's own monitoring system, as PIAP reports regularly point out that, "*Prior notification of the intention to spray pesticides is often demanded by members of the public and the failure to do so, particularly in rural areas, is a major cause of complaint each year*".<sup>96</sup>

3.44 In my second Witness Statement I pointed out at footnote 148 the following cases<sup>97</sup> as just a few examples of where residents wanted prior notification and access to information on the chemicals used, but were not provided with it:

- "*Complainant alleged rape spraying carried out on a windy day caused grass and shrubs to die. Wants to know what chemicals were sprayed, as he never receives notification of spraying*";
- "*Complainant alleged she had previously been poisoned by pesticides. Neighbouring farmer sprayed his field without any prior notification or details of chemicals*"
- "*Complainant alleged that spray had drifted over three sides of his property. No notification of spraying given, concerned about health issues.*"

3.45 In the PIAP report for 2003-04, under "Case Studies," it states, "*As in previous years case studies are included in the report to illustrate key issues and areas of concern that commonly give rise to complaints to FOD and/or result in enforcement action. Once again the case studies cover recurring themes such as drift from crop spraying, prior notification of the intention to spray and pesticide storage...The majority of complaints investigated by HSE inspectors continue to arise from members of the public who are concerned about spray drift...Notification of the intention to spray also remains an issue...*"

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<sup>96</sup> PIAP report for 2001/02 notes at page 19.

<sup>97</sup> That are all taken from the FOD report for the year 2003/04.

- 3.46 Para 6.15 of the Consultation document states, “*We have estimated that between 2 and 10% of the total population living adjacent to rural areas may wish to be provided with information on pesticides used in their locality and may be willing to take action to seek it out.*” Again, based on the reports that have come in to the UK Pesticides Campaign over the last 9 years this would appear to be an underestimate.
- 3.47 In relation to paragraphs 6.12 and 6.26 of the Consultation document, just to reiterate what I pointed out earlier at para 1.5, whilst the majority of reports that the UK Pesticides Campaign has received over the last 9 years is related to agricultural use of pesticides, the campaign also receives reports from people who are exposed and suffer acute and/or chronic adverse effects from other pesticide sources, such as amenity use etc. They will often face the same problems when trying to obtain prior notification, and access to information on the pesticides they are being exposed to.
- 3.48 On page 209 under the heading “*Properties adjacent to pesticide use (Agriculture)*” it is estimated at 500,000 - 650,000; and the number of people resident in these properties between 1 and 1.5 million. This would appear an unreliable estimate, as it only accounts for approx. 2 people per house. Also this is only accounting for properties that are immediately adjacent, which does not consider other residents in the area/locality who will also be at risk of exposure and adverse effects (especially considering how far pesticides have been shown to travel and the calculated health risks for rural residents and communities living within those distances, as highlighted earlier in paragraph 2.66).
- 3.49 On page 210 under the heading “*Spraying Frequency*” it states, “*Arable crops are sprayed on average 5.3 times in a year.*” As I pointed out in para 56(h) of the second Witness Statement, spraying can take place in the locality to residents’ homes numerous times a week for a number of months per year. For example, in 2007, my family and I experienced approx 20 spraying applications in the locality to our home over a period of about 3 months and some of which were only one day apart. In 2008, over a period of just 2 weeks we had about 6 spraying applications in the field adjoining our property, so the average given on page 210 can in no way be taken as

the definitive. Also, the wording of the aforementioned sentence on page 210 states, “Arable crops are sprayed on average 5.3 times in a year.” Therefore is this figure including the spraying applications before and after the crops are in, which of course would need to be accounted for in the number of times the field itself is sprayed as opposed to the spraying of the crop only, and so has this been accounted for? Also as I have continued to point out, I often receive reports from residents where their houses are surrounded on three or even on all four sides by sprayed fields, all of which may be sprayed on any given day, (whether it be the same day or on subsequent days), repeatedly, throughout every year.

### **Responses to Questions 29 to 34 regarding spray notification and records disclosure**

3.50 The UK Pesticides Campaign would like to make the following comments on the three Options in turn in relation to prior notification and access to information.

3.51 Para 6.9 of the Consultation document states, “*It is necessary to review whether current voluntary arrangements are sufficient to effectively influence the behaviours of professional users of plant protection products with respect to providing information to their neighbours **and to consider whether more legislative measures may be necessary. The inclusion of the two relevant provisions in the PPP Regulation in this consultation offers a timely opportunity to allow stakeholder participation in the consideration of this issue.***”

3.52 Paragraph 4.19 of the Consultation document states, “A distinguishing feature of the UK’s pesticide control regime, compared to other Member States, is the prominence afforded to voluntary measures. The UK has a mature and effective programme of voluntary controls. Their success in improving the practice of users and reducing risk is reflected in the commitment in the Government’s Pesticides Strategy to appropriate use of voluntary approaches. The Government believes, therefore, that voluntary approaches will have a role to play in helping to implement this Directive where appropriate. **Where voluntary measures are judged to be insufficient, or have been tried and failed, use of statutory approaches will be considered.**”

3.53 **Options 1 and 2:** For the reasons set out in this submission, as well as in more detail in the Executive Summary at Annex 3 and in full detail in the second Witness Statement, as well as in the other 5 Witness Statements, (and in fact also in all the previous submissions produced by the UK Pesticides Campaign over the last 9 years), **Options 1 and 2 at paragraphs 6.21 to 6.29 are totally insufficient as neither option will be able to change anything, as voluntary measures have been tried again, and again, and again some more, and have failed every time, as they do not work, and cannot work, however many times they are repacked. Most importantly, as highlighted in para 3.9 above, in the situation where the health risks and adverse effects are already accepted, (including by the European Commission when launching the new legislative proposals in July 2006, as can be seen in the statements cited at paras 1.9 to 1.13 above, as well as in the Government’s own monitoring system), voluntary measures are not an option.**

3.54 Voluntary measures would not comply with the requirements of Article 67 of the PPP Regulation as the Competent Authority will have a legal obligation to ensure that residents are provided with access to the information upon request. It is also important to point out that if DEFRA and CRD officials were to advise Ministers for Options 1 and 2 then not only would it be in non-compliance with the new PPP Regulation, it would also be in complete contradiction to the advice DEFRA officials previously gave Ministers in 2006, which was for mandatory requirements for both prior notification and access to information.

3.55 An additional point is that there is also no way for residents to check the accuracy of the information provided if it is only on a voluntary basis. By having a mandatory requirement, there is more of a chance for the information to be accurate, as it could lead to penalties if it is not, and residents can then check the accuracy with CRD or HSE.

3.56 **Question 29 asks, “*What is your preferred approach and why?*”**

3.57 **Option 3:** Paragraph 6.30 of the Consultation document under the heading “*Option 3: Spray Notification (Inclusion in Authorisation)*” states, “*The Government*

*could set a regulatory requirement for advance notification of pesticide use by making it a requirement of use in authorisations for all, or for particular types of product, to do so. Neighbours who have requested to be notified in advance of pesticide use would be so notified. Failure to comply with this requirement would be an offence.”*

3.58 Paragraph 6.31 of the Consultation document under the heading “*Pesticide Records (England Only)*” states, “*We do not have a rationale for measures on disclosing pesticide records that would go further than those described in the proposed scheme under option 2. Therefore, the approach under option 3 for spray records would be the same as for option 2.*”

3.59 The current wording for Option 3 in relation to prior notification is not satisfactory, and as said earlier, the fact that there is no suggested option for Option 3 in relation to access to information is a very significant and serious omission, as Option 3 should have been for direct access to information provided on a mandatory basis.

3.60 **Therefore, based on what the UK Pesticides Campaign has set out above in relation to prior notification and access to information, the UK Pesticides Campaign would support the following amended versions of Option 3:-**

**Option 3 (amended):**

- ***“Spray Notification (Inclusion in Authorisation). The Government to set a regulatory requirement for advance notification of any pesticide use by making it a requirement of use in authorisations for all products. Residents<sup>98</sup> who have requested to be notified in advance of pesticide use would be so notified. The notification must be at least 48 hours in advance***

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<sup>98</sup> As highlighted earlier at paragraph 2.51 above, residents have now been defined in a number of European documents, and is referred to in both the PPP Regulation and the SUD and therefore for consistency, residents should be used instead of neighbours when referring to residents.

*of any spraying application. Failure to comply with this requirement would be an offence.”*

- *“Pesticide Records (England Only). The Government to set a regulatory requirement for farmers and other pesticide users to provide information on the pesticides used directly to residents and others.”*

3.61 Question 30 asks, *“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?”*

3.62 The response to this question has already been answered in what is detailed above.

3.63 Question 31 asks, *“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?”*

3.64 The response to this question has already been answered in what is detailed above, but in short, no, absolutely not, this is an outrageous suggestion, it is the polluter pays not the polluted!

3.65 Question 32 asks, *“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?”*

3.66 The response to the first sub-question, yes, but in addition to the other measures detailed above, not *instead of*. The second question is N/A to the UK Pesticides Campaign.

3.67 Question 33 asks, *“Do you have any comments on the usefulness of public information signs where the public may have access to sprayed areas?”*

3.68 The use of signs in fields is appropriate for bystanders and other members of the public, but must not be used *instead of* providing direct prior notification and access to information to residents in their homes, some of whom are housebound and bedbound. See the comments made earlier on this point and also in relation to signs see pages 87 to 97 of the 2003 Consultation submission included as Annex 1 to this submission.

3.69 **Question 34 asks, “*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?*”**

3.70 The response to this question has already been answered in what is detailed above, but just to point out where is the question to ask residents and other members of the public about the impacts on not getting this information?!

### **Concluding comments (regarding Sections 1 to 3 above)**

3.71 The use of pesticides and other hazardous chemicals has resulted in serious consequences for public health, animals, wildlife, air, water, soil, food and the wider environment. This has substantial economic and financial implications for all parties (with the exception of the pesticide industry). Obviously the personal and human costs to those suffering chronic diseases cannot be calculated in financial terms.

3.72 **Considering the inherent risks, and acute and chronic adverse health impacts of pesticide use, then a precautionary and preventative approach must be utilized, especially in relation to the protection of vulnerable groups including residents, babies, children and those already ill.**



3.73 **Mandatory measures must be introduced to *finally* protect the health of residents and other members of the public from exposure to pesticides. These measures have to be at Governmental level from changes to its policy so that it is consistent for all rural residents across the country. Therefore the aforementioned mandatory measures of 1) prohibition of pesticide use in the locality to residents' homes, schools, children's playgrounds and other areas where vulnerable groups or other members of the public may be present; 2) a new legal obligation for farmers and other pesticide users to provide information directly to residents and others on the pesticides used; 3) a new legal obligation for farmers and other pesticide users to provide residents with at least 48 hours prior notification before pesticide spraying, must be introduced into the statutory conditions of use for the authorization/approval of any pesticide.**

If you require any further information on the comments made and information provided in this submission please contact me at the details listed below.

Please note that I am hoping that Section 4 of this submission will be finished in time to be submitted, and if it is, then I shall send this on separately.

Thanks and kindest regards,

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