EXPLANATORY MEMORANDUM TO

THE SUPPLY OF MACHINERY (SAFETY) (AMENDMENT) REGULATIONS 2011

2011 NO. 2157

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The main purpose of the instrument is to amend the Supply of Machinery (Safety) Regulations 2008 (SI 2008/1597) (the "Principal Regulations") in order to implement Directive 2009/127/EC (O.J. No. L 310, 25.11.2009, p.29) of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application . Directive 2006/42/EC (O.J. L 157, 9.6.2006, p. 24) (the "Machinery Directive") sets out the essential health and safety requirements (EHSRs) that CE marked machinery must meet before it can be placed, and/or put into service on the EU Market. The amending Directive introduces additional essential environmental protection requirements for new pesticide application equipment.

2.2 The instrument also makes some other minor amendments to the Principal Regulations and makes consequential amendments to some Northern Ireland Statutory Rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is being made to implement Directive 2009/127/EC which amends the Machinery Directive with regard to machinery for pesticide application.

4.2 The Principal Regulations implement the Machinery Directive and this instrument amends the Principal Regulations in order to transpose the requirements of Directive 2009/127/EC. A Transposition Note is attached as an Annex to this Memorandum.

4.3 The Department for Business, Enterprise and Regulatory Reform (the former DTI, now the Department for Business, Innovation and Skills) submitted an EM on Council Doc No. 12876/08 on 13th October 2008 relating to: "Proposal for a Directive of the European Parliament and of the Council on machinery for pesticide application, amending Directive 2006/42/EC of 17 May 2006 on machinery". The Commons European Scrutiny Committee cleared it, (Report 3, Session 08/09). The Lords Select Committee on the EU cleared it (POS 14th November 2008 session 07/08).

4.4 The instrument also makes some other minor amendments to the Principal Regulations and makes consequential amendments to the Lifting Operations and Lifting Equipment Regulations (Northern Ireland) 1999 (S.R. 1999 No. 304) and the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999 (S.R. 1999 No. 305). These amendments are consequential on the making of the Principal Regulations and the revocation of the Supply of Machinery (Safety) Regulations 1992 (S.I. 1992/3063).

5. Territorial Extent and Application

5. 1 This instrument applies to all of the United Kingdom and does not cover issues that are devolved in Scotland, Wales or Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Machinery Directive is a New Approach directive. New Approach directives remove technical barriers to trade by harmonising national health and safety provisions in a number of product areas. Products which comply with their requirements are CE marked and can be placed on the market and put into service throughout the EU.

7.2 The Machinery Directive already fixes harmonised health and safety requirements for all new machinery sold in the EU. This latest amendment means that, for the first time, the Machinery Directive also covers certain environmental protection requirements.

7.3 These include requirements for machinery for pesticide application to be designed and constructed:

- in order that its operation does not damage the environment;
- to facilitate precise filling and complete emptying of pesticide, while preventing spillage and avoiding water source contamination
- to ensure an even distribution and homogeneous deposition of pesticide on targets;

- to facilitate cleaning; and

to facilitate the changing of worn parts.

7.4 The new requirements apply to just one category of machinery - the machinery used to apply pesticides to plants grown in European farms, orchards, vineyards, parks and gardens. The machinery concerned ranges from the large sprayers used by farmers to the smaller, portable equipment used by gardeners.

7.5 This instrument is therefore part of the legal framework for the effective functioning of the 'internal market' in Pesticides Application Equipment (PAE). This framework helps to reduce barriers to trade and uncertainty around requirements through harmonisation of standards and provision of guidance. The instrument also corrects market failures as information failures on requirements around PAE standards led to PAE being produced to different standards across Member States. This distorted the Single Market.

7.6 The instrument also makes some minor amendments to the Principal Regulations to

- remove a requirement on the Secretary of State to publish information in relation to conformity assessment bodies as this information is already published by the European Commission on its NANDO (New Approach Notified and Designated Organisations) website;

- remove a small element of gold plating in relation to the duties of those putting machinery into service which duplicated obligations imposed under health and safety legislation;

- include a statutory review provision requiring the Secretary of State to review the operation and effect of the Principal Regulations and publish a report within five years of 1st December 2009 and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Principal Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Principal Regulations or to amend them

and makes some consequential amendments to some Northern Ireland Statutory Rules relating to the revocation of the Supply of Machinery (Safety) Regulations 1992 by the Principal Regulations in 2008.

8. Consultation outcome

8.1 Directive 2009/127/EC is a small amendment in terms of the scope of the Machinery Directive and only affects a small sub-sector of the overall machinery industry. BIS has therefore undertaken only an informal consultation. BIS consulted the UK manufacturers of this equipment through their representative body, the Agricultural Engineers' Association and we have also sought views from users of the equipment through the National Farmers' Union and the Sports Turf Research Institute who represent the amenities sector. In addition, BIS carried out consultations with the Health and Safety Executive, and Northern Ireland HSE. These consultations concluded that the provisions contained in the

instrument did not pose any particular problems to either the enforcement agency or to the manufacturers and users of pesticide application equipment.

9. Guidance

9.1 Detailed guidance material on how this instrument will operate will be available on the BIS website (www.bis.gov.uk/).

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business. The Government considers that the legislation is not expected to impose a disproportionate cost to small firms. The additional requirements imposed on suppliers of PAE are not expected to be significant as the rate of compliance is already deemed to be high.

12. Monitoring & review

12.1 The Impact Assessment states the policy will be reviewed in December 2014. This reflects the statutory review provision which this instrument inserts into the Principal Regulations. The Department for Business, Innovation and Skills will undertake such a review.

13. Contact

13.1 Carol Wheeler at the Department for Business, Innovation and Skills Tel: 020-7215 5993 or email: carol.wheeler@bis.gsi.gov.uk can answer any queries regarding the instrument.

Transposition note for Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application ("the Directive")

The relevant provisions of the Directive have been transposed into UK law by the Supply of Machinery (Safety) (Amendment) Regulations 2011 ("the Regulations") as set out in the table below.

Directive 2006/42/EC ("the Machinery Directive") sets out the essential health and safety requirements (EHSRs) that CE marked machinery must meet before it can be placed, and/or put into service, on the EU Market. The Machinery Directive is intended both to promote the free movement of machinery within the Single Market, but also to ensure a high level of protection to EU workers and citizens. The Machinery Directive is implemented into UK law by the Supply of Machinery (Safety) Regulations 2008 ("the Principal Regulations").

The Directive amends the Machinery Directive by introducing additional essential environmental protection requirements for new pesticide application equipment.

Article of the Directive	Objectives	Implementation in the Regulations	Responsibility
Article 1(1)	Adds a definition of "essential health and safety requirements" to Article 2 of the Machinery Directive	Regulation 3(3)(a)	N/A
Article 1(2)	Replaces Article 4(1) of the Machinery Directive with a new provision which requires Member States to ensure machinery and partly completed machinery not only does not endanger people, domestic animals and property but also does not, where applicable, endanger the environment.	Regulation 3(3)(c) which amends the definition of "safe" in regulation 2(2) of the Principal Regulations to include a reference to not endangering the environment. The remaining provisions of Article 4(1) are unchanged by the Directive and are therefore already implemented by the Principal Regulations (in particular Part 3 (especially regulations 7(1), 7(2) and 8(1)) and Part 6).	Legislative responsibility lies with the Secretary of State. Practical responsibility under the Principal Regulations falls on the "responsible person" (i.e. the manufacturer or authorised representative) in the first instance and on the enforcement authorities.
Article 1(3)	Replaces the first paragraph of Article 9(3) of the Machinery Directive with a new paragraph which requires the Commission to consider the danger to the environment in addition to dangers to the health of persons and animals and to property, when considering if action is	No transposition required.	Commission/Secretary of State

	needed where there are concerns about harmonised standards.		
Article 1(4)	Replaces Article 11(1) of the Machinery Directive with a new paragraph which requires Member States to take action where they ascertain that ostensibly compliant machinery is likely to endanger the environment as well as where it is likely to endanger the health of persons or animals or property.	No transposition required	Secretary of State
Article 1(5)	Amends Annex I to the Machinery Directive by introducing references to protection of the environment and detailed health and safety requirements in relation to machinery for the application of pesticides and a definition of that machinery.	Regulation 8 and the Schedule to the Regulations	Responsible persons
Article 2	Directive to be transposed by 15 June 2011 and come into force on 15 December 2011	All (including Explanatory Note as regards third paragraph of Article 2(1))	Secretary of State
Article 3	Fixes entry into force date of Directive	No transposition required	N/A
Article 4	Directive is addressed to Member States	No transposition required	N/A