

To Business Committee

From: Carwyn Jones AM
Minister for Environment, Planning and Countryside

EXPLANATORY MEMORANDUM

PESTICIDES, ENGLAND AND WALES

AMENDMENT TO THE CODE OF PRACTICE FOR USING PLANT PROTECTION PRODUCTS: DRAFT PARAGRAPH 3.7.4

Summary

The Code of Practice for Using Plant Protection Products was introduced by the Welsh Assembly Government, the Department for Environment, Food and Rural Affairs (Defra) and the Health and Safety Commission (HSC) on 15 December 2005. The Code replaced the previous Code of Practice for the safe use of pesticides on farms and smallholdings published in 1990 (The Green Code). It also combined the non-statutory Code of Practice for the use of approved pesticides in amenity and industrial areas and parts of the Code of Practice for the safe use of non-agricultural pesticides.

Paragraph 3.7.4 of the Code of Practice deals with the use of pesticides in or near public access areas and public rights of way. This paragraph is now being amended to correct an error in the original paragraph, where it refers to legislation which is yet to be brought into force.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Amendment to the Code of Practice for Using Plant Protection Products: Draft Paragraph 3.7.4, in accordance with Standing Order 25 section 3.
2. A copy of the amendment to the Code is submitted with this Memorandum.

Enabling Power

3. The power enabling this amendment to the Code to be made is contained in section 17 of the Food and Environment Protection Act 1985. Responsibility for issues relating to the contents of the Code has been delegated to my portfolio as Minister for Environment, Planning and Countryside. The amendment to the Code is being made together with England.
4. As part of the Code is approved under the Health and Safety at Work etc Act 1974, the formal approval of the Health and Safety Commission has been obtained for the amendment to Paragraph 3.7.4 of the Code. It has been endorsed by Ministers in the Department for Work and Pensions. Also, as an approved Code under the Groundwater Regulations 1998 and the Food and Environment Protection Act 1985, both Department for Environment, Food and Rural Affairs (Defra) Ministers responsible for these areas have endorsed it.

5. The amendment to this Code could have been made on a Wales only basis. However, to do so would have been impractical as the Department for Environment, Food and Rural Affairs' Pesticides Safety Directorate (PSD) have the technical and scientific expertise to make this Code. In addition, PSD are the lead UK agency in terms of policy and enforcement for agricultural pesticides in England and Wales.

Effect

6. The Code sets out the best practice for the use of pesticides, which are controlled under the Control of Pesticides Regulations 1986, the Plant Protection Products (Basic Conditions) Regulations 1997 and the Plant Protection Products Regulations 2005. The Code's statutory basis means that it can be used in evidence if anyone is taken to Court for a breach in pesticide, health and safety at work or protection of groundwater legislation.
7. This amendment to the Code of Practice was necessitated by a Judicial Review pre-action protocol letter sent to Defra Ministers on 21 March 2006. The letter brought to the attention of the Pesticides Safety Directorate and Defra that there was an error in the 2006 Code in a paragraph (paragraph 3.7.4) dealing with the Countryside and Rights of Way Act 2000 (CRoW).
8. Section 135A of the Highways Act 1980, which was inserted by the CRoW Act but has not yet come into force, (a date for the coming into force has yet to be determined), will allow for the temporary diversion of a footpath or bridleway by the occupier of the land – following a completion exercise – where “works of a prescribed description are likely to cause danger to users” of the way. The “works” to be prescribed under section 135A (when it has been brought into force) have yet to be determined.
9. Paragraph 3.7.4 of the 2006 Code suggested that landowners may temporarily close public rights of way, under provisions in the CRoW Act 2000 (section 135A of the Highways Act 1980, as inserted by the CRoW Act), when applying (or having applied) pesticides, and that landowners may apply to the relevant authorities for access to be restricted in this manner. However, this information is incorrect as it refers to legislation that has yet to be brought into force.
10. The amendment to paragraph 3.7.4 of the Code will correct this error.

Target Implementation

11. It is intended that the amendment to the Code be made on 25 October 2006 and come into force on 24 November 2006. If the intended target dates are not achieved and the Code is not amended, there is a risk of a legal challenge.
12. The Scottish Executive Environment and Rural Affairs Department is expected to issue their own version of the Code of Practice within the next 7 weeks. They have been informed of the pre-action protocol letter. However, the text of the similar paragraph in their Code is not the same as the England/Wales version. Therefore, there is no need for them to make any amendment.
13. The Department of Agriculture in Northern Ireland are currently updating their edition under their legislation. They are aware of the pre-action protocol letter.

Any new Code they publish will follow the amendment made to the England/Wales version.

Regulatory Appraisal

14. As this amendment to the Code falls outside the definition of Assembly subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Financial Implications

15. The Code is available electronically free of charge in English via the Department for Environment, Food and Rural Affairs' Pesticides Safety Directorate's website and will be made available in Welsh from the Welsh Assembly Government's website. Therefore, there are no cost implications for the industry arising from this legislation.

16. Hard copies are available in English from Defra Publications for £17 (includes £2 postage and packing). Defra will include an erratum slip with those copies held in stock.

17. Publication of the Welsh language version of the Code was postponed as soon as officials were made aware of the error in the current text. It is anticipated that hard copies of the Welsh language Code will be made freely available before the end of this year. In accordance with the Assembly Publications Scheme, we do not charge for publications. Any publication costs will be accommodated within the Plant Health Services Budget Expenditure Line.

18. There are no additional costs for the industry associated with the implementation of the amended Code.

Consultation

With Stakeholders

19. The Pesticides Safety Directorate (PSD) conducted a consultation on the amendment to paragraph 3.7.4 of the Code between 15 June 2006 and 28 July 2006, principally with those who commented on this particular paragraph in the original consultation.

20. As this was a single specific issue, and in view of the risk of legal action if there was undue delay in amending the Code, the consultation lasted for only 6 weeks. A list of those consulted is attached at Annex A.

21. Although no one from Wales responded to this particular part in the original consultation, Welsh Assembly Government officials copied the PSD's revised consultation, for information purposes, to those Welsh stakeholders and interested parties included in the original consultation. A list of those parties is at Annex B. The Countryside Council for Wales, The Brecon Beacons National Park, The Welsh Consumer Council and The Wales Council for Voluntary Action responded to the PSD. However, no substantive changes were proposed.

22. The PSD received 18 replies to the consultation and copies are available to the public from the Department for Environment, Food and Rural Affairs' Library. These responses were carefully analysed and the vast majority were applied to

ANNEX A**Recipients list**

Name	Organisation
Dr Charles Clutterbuck	
John Skinner	
Mr D Russell	Agricultural Engineers Association
Ms Hazel Doohan	Agricultural Industries Confederation
Dr Paul Beckwith	British Waterways
Mr P Goldsworthy	Crop Protection Association Ltd
Colin Palmer	Forestry and Timber Association
Mr J Dewar	Forestry Commission
Mr Phil Michaels	Friends of the Earth
Mr R Hirst	Institute of Horticulture
Colin Palmer	International Mountain Bike Association
Tom Bals	Micron Sprayers Limited
Ms J Hewitt	National Association of Agricultural Contractors
Mr N Kift	National Farmers Union
Ms A Craig	Pesticide Action Network UK
Mrs J Davis	Ramblers Association
The Secretary	Ramblers Association
The Secretary	Rights of Way Review Committee
Tony Woodley	TGWU (Agriculture Section)
Georgina Downs	UK Pesticides Campaign

ANNEX A

ADDITIONS TO THE ORIGINAL LIST (requests)	
Peter Melchett	Soil Association
Michael Green	Soil Association
Mrs Elsie Mansbridge	33 Chester Road, Chigwell, Essex, IG7 6AH
Institute of Public Rights of Way Officers	

ANNEX B

LIST OF CONSULTATION RECIPIENTS

1. Aberystwyth University
2. ADAS (Wales)
3. Bangor University
4. Brecon Beacons National Park
5. Campaign for the Protection of Rural Wales
6. Cardiff University
7. Coed Cymru
8. Country Land & Business Association (Wales)
9. Countryside Council for Wales
10. Farmers Union of Wales
11. GM Free - Cymru
12. Institute of Grassland and Environmental Research
13. LACORS (Wales)
14. NFU Cymru
15. Organic Center for Wales
16. Pembrokeshire Coast National Park Authority
17. Ramblers Association (Wales)
18. RSPB (Wales)
19. Snowdonia National Park Authority
20. Swansea University
21. Wales Environment Link
22. Wales Tourist Board
23. Wales Young Farmers' Club
24. Welsh Association of National Park Authorities
25. Welsh Beekeepers' Association
26. Welsh Consumer Council
27. Welsh Council for Voluntary Action
28. Welsh Food Alliance
29. Welsh Institute of Rural Studies
30. Welsh Local Government Association

ANNEX C

ANALYSIS OF RESPONSES TO CONSULTATION ON THE DRAFT CODE OF PRACTICE FOR SAFE USE OF PLANT PROTECTION PRODUCTS

Reply from:	Date:	Comments:	Analysis:	Ack:
Hazel Doohan Agricultural Industries Confederation Ltd Confederation House East of England Showground Peterborough PE2 6XE	28/7/06	Amendments to several bullet points to assist clarity and include omissions	Not all of the amendments used the exact wording given by the AIC as we are trying to ensure that the English used is plain and accessible to all. We used the intention of the amendment. Some amendments had already been made because of previous replies and were very similar to the suggestion from the AIC so were left.	28/7/06
Christopher Gledhil Chief Executive Brecon Beacons National Parks Authority Plas y Ffynnon Cambrian Way Brecon Powys LD3 7HP	7/07/06	No comment		7/7/06
Caroline Bedell National Access Advisor Country Land and Business Association	21/7/06	Clarification of wording, particularly with reference to permissive access	Intention used but with some change of wording to keep whole code clear in terms of plain English	27/7/06

ANNEX C

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Roger Thomas Chief Executive Countryside Council for Wales Maes-Y-Ffynnon Penrhosgarnedd Bangor Gwynedd LL57 2DW	21/7/07	Put in Welsh Assembly Government as well as Defra. Other suggestions offered. Welcome the update. Guidance is generally clear and sensible covering all relevant issues.	WAG already asked for this in previous correspondence and has been taken on board.	27/7/06
Dr Anne Buckenham Director of Policy Crop Protection Association 18/20 Culley Court Orton Southgate Peterborough PE2 6XS	14/7/06	Delete 'Remember that there might be damage to the health of people or animals until the spray has dried and make sure you avoid such risks' as sounds alarmist and make agree with penultimate bullet point about exclusion periods	Not allowed to use pesticides with exclusion conditions on right of way as cannot exclude people from it. This is not about pesticides with exclusion periods but a reasonable precaution users should take.	14/7/06
Emily B Ramsay Forestry Commission Safety, Health and Environment Unit	27/6/06	"Misleading notices" in the CRoW context which might be used to deter access rights. PSD should consult with colleagues in Defra.	Have had major assistance from Defra colleagues knowledgeable about rights of way issues. Hopefully it is adequately addressed in the paragraph.	27/6/06

ANNEX C

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
<p>Mrs E M Mansbridge For the Safety of the Home and Family 33 Chester Road Chigwell Essex IG7 6AH</p>	<p>11/7/06</p>	<p>Assume code is voluntary and that won't be followed so requirements not adequately binding</p> <p>Industrial chemicals can adversely effect reproduction, teratology and fertility.</p> <p>Many years for voluntary code to become widely accepted and turn into legislation. Code needs to provide greater protection for those who live near rights of way and prevent pesticide contamination of homes and gardens.</p> <p>Safety exposure limits should be applied to exposed homes. Homes and families should be checked and biologically monitored for exposure.</p>	<p>Code is statutory like Highway Code.</p> <p>Amalgamation of 3 previous codes. Two of these were statutory before.</p> <p>Well established laws as well as code of practices for use and sale of pesticides.</p> <p>Full consideration will be given to comments at end of consultation period.</p>	<p>11/7/06</p>
<p>Colin Palmer International Mountainbiking Association UK And Forestry and Timber Association c/o Woodview Cottage Coddington LEDBURY Herefordshire HR8 1JH</p>	<p>6/7/06</p>	<p>Amendments to the paragraph</p> <p>Agreed with re-titling</p> <p>Agreed with the modification of part about S135A</p>	<p>Will consider at end of consultation period. Wording from Mr Palmer quite in line with Plain English. Slight change to number 6 as we need to make sure that there is no drift, whether or not the pesticide is allowed on public rights of way. Didn't really understand the final point of number 6 so no change made to end of sentence.</p>	<p>7/7/06</p>

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Jill Hewitt Chief Executive National Association of Agricultural Contractors Samuelson House Paxton Road, Orton Centre Peterborough PE2 5LT	4/7/06	Does the code need to take into account use of sulphuric acid? See sentence at 3.7.2.	Paragraph used to include specific reference to sulphuric acid which removed during the re-drafting – did not want to stipulate looking at one particular approval when users should be following approvals for every pesticide they use. This looks like a good compromise.	4/7/06
Helen Ferrier NFU Agriculture House Stoneleigh Park Warwickshire CV8 2TZ	26/7/06	General comments about need to amend other parts of the code, with specific mention of some of them. Some deletions of text	Not intending to amend any other part of the code in the near future. Not able to make suggested amendments as other replies specifically referred to the bullet points mentioned. Most respondents would prefer these to be kept in place.	27/7/06

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Alison Craig PAN UK	27/7/06	<p>General comments on the approval system and its shortcomings.</p> <p>General comments on CRoW.</p> <p>Comments on RCEP report.</p> <p>Comments on several bullet points without direct amendment of wording.</p> <p>Include country and urban parks among 'other public places' bullet point 3.</p>	<p>There is no unacceptable risk from pesticides when used according to the approval and label instructions.</p> <p>Pesticides, particularly herbicides, are approved for use on hard surfaces. Local Authorities use them to treat pavements and paths for unwanted weeds. Code of practice not only for use on farms but also in amenity situations and forests. Must give advice for all legal uses of pesticides.</p> <p>Law itself says that pesticides must only be applied to target to be treated. Code gives advice on control of spray drift. Users must take all reasonable precautions to ensure that spray does not drift onto non-target areas.</p> <p>Included 3.</p>	27/7/06
Janet Davis Head of Rights of Way Policy The Ramblers' Association 2 nd Floor Camelford House 87-90 Albert Embankment London SE1 7TW	21/7/06	Suggested amendments to the text	Added them with some amendment of wording to allow the intention but keep to PEC standards.	27/7/06

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Sue Toland Rights of Way Review Committee The Granary Carlcott Calne SN11 9HL	27/7/06	Various amendments to bullet points clarifying the principles of rights of way and permissive access	Many of these were dealt with in other correspondence so have already been amended to suit.	27/7/06
Michael Green Policy Officer Soil Association Bristol House 40-56 Victoria Street Bristol BS1 6BY	3/7/06	Pesticides should never be used on or near a public right of way. Difficult or impossible to control drift. Not able to close rights of way, therefore people and animals at risk.	There is no unacceptable risk from pesticides when used according to the approval and label instructions. Pesticides, particularly herbicides, are approved for use on hard surfaces. Local Authorities use them to treat pavements and paths for unwanted weeds. Code of practice not only for use on farms but also in amenity situations and forests. Must give advice for all legal uses of pesticides. Law itself says that pesticides must only be applied to target to be treated. Code gives advice on control of spray drift. Users must take all reasonable precautions to ensure that spray does not drift onto non-target areas.	5/6/06

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Georgina Downs UK Pesticides Campaign <i>Reflections</i> Runcton Lane Runcton Chichester West Sussex PO20 1PT	27/7/06	General comments about pesticide approval system, RCEP report and possible exposure to pesticides. Comments on acceptable and unacceptable risk. Comments on statutory conditions of use and place of code. Request for use of pesticides on or near public rights of way to be prohibited.	Comments on RCEP passed on. General comments noted. Had several replies with specific amendments to the wording. These may address some of the concerns you have with the paragraph itself. Explain statutory?	31/7/06
Constance Adams Policy Officer Wales Council for Voluntary Action Ladywell House Newtown Powys SY16 1JB	7/7/06	No comment but welcome actions to provide greater clarity to let landowners use pesticides safely while making sure access is maintained.		7/7/06
Plant Health and Biotechnology Branch Food and Market Development Division Welsh Assembly Government Department for Environment, Planning and Countryside Cathays Park Cardiff CF10 3NQ	29/6/06	Amendments to the paragraph.	Will consider with any other amendments. May not be able to use exact wording because of Plain English Clarity Award ('imply abatement' would not be accepted) but will take implication on board.	4/7/06

ANNEX C

Analysis of consultation replies (continued)

Reply from:	Date:	Comments:	Analysis:	Ack:
Kim Brown Corporate Services Manager Welsh Consumer Council 5 th Floor Longcross Court 47 Newport Road Cardiff CF24 0WL	3/7/06	No comment		4/7/06