

Revised code of practice: public exposure and rights of way

An error in the government's new Code of Practice for pesticides has been successfully challenged by PAN UK and Friends of the Earth.

Alison Craig reviews the implications of the new code for people's exposure to pesticides, particularly where there are public rights of way and warns that we could be confronted with a choice of either having countryside access with unacceptable risks to our health or protection from pesticides and closed rights of way.

Seventy seven per cent of UK adults (about 38 million) say they walk for pleasure at least once a month¹. Cultivated land surrounds most villages and towns and it has recently been estimated that the length of footpaths, tracks, roads and canals adjacent to, or running through, arable and horticultural land is approximately 156,860 miles². Despite concerns about people's health when walking across fields treated with pesticides, legislation to protect walkers from pesticides remains weak.

Spraying rights of way

It is clearly acknowledged in the old Code that 'Deliberate application of a pesticide to a public right of way is likely to expose those who use the path to a risk to health, particularly until the spray has dried. Pets could also be adversely affected'. It advises that landowners have no powers to temporarily close rights of way and so should not spray them where such risks exist. Such warnings are omitted from the revised code.

PAN UK is also concerned that despite representations to government on the issue the use of pesticides with 're-entry intervals'

as a statutory condition of use is still permitted. Re-entry intervals are set periods of time between the application of the pesticide and when people can re-enter the treated area. They are required when access to an area soon after spraying might pose a health risk.

Error in code

The new Code indicates incorrectly, that farmers can apply to restrict access to a right of way using a new provision under the Countryside and Rights of Way Act (CROW). CROW will give the public new countryside access but will also give farmers the power to close paths for 'dangerous works'⁷. However, this has not yet come into force, and there is no guarantee that pesticide spraying will be considered a 'dangerous work'. This advice to farmers was therefore premature.

To get a correction to the code, PAN UK and Friends of the Earth's Rights & Justice Centre sent the Department for the Environment, Food, and Rural Affairs a 'letter before claim', which is the first step towards Judicial Review. The government admitted their mistake⁸ and will conduct a fresh consultation on paragraph 3.7.4 of the

revised Code, announced on the Pesticides Safety Directorate (PSD) website.

When the new consultation opens, PAN UK urges everyone with an interest in countryside access and the protection of health from pesticides to:

- contact PSD to request the consultation documents when they are issued⁹
- contact us for further analysis
- make a submission to the consultation, advocating that the use of pesticides where there are rights of way should be phased out
- there should be an absolute presumption against the use of any pesticide product with a 're-entry interval' as a statutory condition of use where there is a right of way or any other form of public access.

Code advice inadequate

The revision of the Code was an opportunity for the government to restrict or ban the use of 're-entry interval' pesticides on fields where there are rights of way and it is disappointing that this was not done.

People should not be exposed to pesticides when walking on rights of way. However, if pesticides are used, people should be informed of exactly what substances they are being exposed to, and when they were applied. Notices about pesticide applications should not be displayed to deter people from using rights of way. This right to know principle has been clearly endorsed in the recent report from the Royal Commission on Environmental Pollution¹⁰, to which the government is due to make a formal response by July.

New code of practice on pesticides

The UK government publishes an official code of practice for the use of pesticides that advises professional users on how to comply with the law. In February of this year, following a consultation, a revised version³ was published. It replaces three older codes covering agricultural pesticides (the Green Code), non-agricultural pesticides⁴, and pesticides used in amenity and industrial areas⁵, and incorporates legislative changes that have occurred since the previous codes were published.

The new Code is clearer in its layout and has been approved by the Plain English Campaign. A section at the beginning of the code on emergency procedures provides both practical advice and a clear warning that pesticides are hazardous substances and need to be treated appropriately. The section on whether a pesticide should be used at all is also given more prominence, although sadly has watered down its advice from 'unnecessary use of pesticides can involve risks to the health of humans' to 'using pesticides incorrectly can put people...at risk'. The section on protecting the public has double in length and includes new information on notification and buffer zones, although neither are currently required.

The status of the code remains non-mandatory. A criticism made by the Royal Commission on Environmental Pollution (RCEP) on the previous code still largely applies: 'The legal force of the Green Code is unclear and variously interpreted. ... Advice regarding crop spray does not adequately reflect the importance of its control and therefore needs strengthening⁶'.

1. The Ramblers Association, www.ramblers.org.uk/info/factsandfigures/recreation.html, accessed 5 May 2006.

2. Royal Commission on Environmental Pollution, *Crop spraying and the health of bystanders and residents*, September 2005, page 7, par 1.23, www.rcep.org.uk/cropspraying.htm

3. Pesticides – Code of practice for using plant protection products, Department for the Environment, Food and Rural Affairs (Defra), the Health and Safety Commission (HSC) and the National Assembly for Wales Environment, Planning and Countryside Department, January 2006, published 13 February 2006.

4. *Safe use of pesticides for non-agricultural purposes*, Approved code of practice, L9 (revised 1995).

5. *Code of practice for the use of approved pesticides in amenity and industrial areas*, National Association of Agricultural Contractors/National Training Council, 1991.

6. Royal Commission on Environmental Pollution, *Crop spraying and the health of bystanders and residents*, September 2005, page 88, par 5.62, www.rcep.org.uk/cropspraying.htm

7. Sections 135A and 135B of the Highways Act 1980 (as amended by paragraph 16 of Schedule 6 to the Countryside and Rights of Way Act 2000). *cc: The Ramblers Association*, 20th February 2006.

8. Defra letter to Friends of the Earth, 7 April 2006.

9. Pesticides Safety Directorate, Joan Reeves, tel 01904 640500 joan.reeves@psd.defra.gsi.gov.uk

10. Royal Commission on Environmental Pollution, *Crop spraying and the health of bystanders and residents*, September 2005, page 112, recommendation 6.53, www.rcep.org.uk/cropspraying.htm