

Health and Safety Commission Paper		HSC/06/35	
Meeting Date:	9 May 2006	Open Gov. Status:	Fully Open
Type of Paper:	Below the line	Paper File Ref:	
Exemptions:	None		

## HEALTH AND SAFETY COMMISSION

### Publication of a new Code of Practice for using Plant Protection Products in Scotland

A Paper by: Garry Wiles, Band 4, DR4 Biocides and Veterinary Medicines Unit

Name of Board Member lead: Giles Denham

Cleared by DCE / Board Member: Jonathan Rees on 12 April 2006

#### Issue

1. Publication of the Code of Practice for using Plant Protection Products in Scotland at **Annex C** (a replacement for the withdrawn Code of Practice for the Safe Use of Pesticides on Farms and Holdings, which applied to the whole of Great Britain).

#### Timing

2. Urgent. Scottish Executive (SE) officials are keen that the new Code is published in July 2006. It replaces the Code of Practice for the Safe Use of Pesticides on Farms and Holdings, which was out of date and misleading in parts and has been withdrawn by Defra (the publisher) and replaced in England and Wales by the Code of Practice for using Plant Protection Products. As some of the new Code for Scotland is approved under HSWA, the Commission's formal approval is required before the final text can be released for publication.

#### Recommendation

3. That the Commission write to Lord Hunt with proposals to approve the relevant parts of the code set out in the Notice of Approval on numbered page 14, so that it can be approved by Scottish Ministers and published. A draft letter is at **Annex B**.

#### Background

4. The Commission agreed at the 7 September 2004 meeting (HSC/04/106) to the consultation on the new Code. The main points are set out below for ease of reference:
  - the withdrawn publication is known colloquially as the 'Green Code' and is a joint HSE/Defra publication containing guidance on the safe use of pesticides by professional users in agriculture and horticulture.

- It was first published in 1990 and comprises a Code of Practice issued under the Food and Environment Protection Act 1985 (FEPA), an approved Code of Practice under the HSWA giving COSHH guidance, and general guidance on good practice in the use of pesticides. The statutory base for the revised Code includes the Groundwater Regulations 1998 also.
- The new Code has been re-titled the Code of Practice for using Plant Protection Products in Scotland to reflect the fact that Scotland now has its own Regulations governing the approval and use of Plant Protection Products there.
- The main differences between the old and new Codes include widening the scope to include areas such as amenity, horticulture and commercial forestry, and detailed updates reflecting developments in legislation and good practice. Annex A of HSC/04/34 outlines in greater detail the changes in the England & Wales version of the Code. The Scotland version follows a similar format but reflects the position in Scotland.

## Argument

5. SE officials will seek ministerial approval by Mr Ross Finnie, Minister for Environment and Rural Development once the Commission has signalled its approval.
6. The Commission agreed at its 8 March 2005 meeting (HSC/05/41) to approve the relevant parts of the Code of Practice applicable in England & Wales, and it was published on 15 December 2005.
7. The Scottish code differs from that of Defra primarily in those areas where there is separate Scottish legislation for instance
  - Section 3.7.4 Public access rights, and
  - Section 5 Disposing of pesticide waste.
 Other more minor differences reflect uniquely Scottish organisations such as the Scottish Environment Protection Agency, or Scottish publications e.g. the Scottish Biodiversity Strategy. These differences do not affect the parts of the Code for approval by the Commission.
8. The SE is aware of the recent threat of legal challenge to the Defra/HSC code by Friends of the Earth (FOE) and the Pesticides Action Network UK (PANUK). Their complaints centre on Section 3.7.4 **Public rights of way**, in particular that the provision of the Countryside and Rights of Way Act 2000 relating to temporary closure of public rights of way is not yet in force. With differing legislation and practice in Scotland, the SE is satisfied that it would not be open to a similar legal challenge.
9. HSC approved a separate Code of Practice for the safe use of pesticides for non-agricultural purposes (L9) in 1995. The scope of the new Code now overlaps that of L9 (both, for example, apply to forestry) but the two are fully consistent. Decisions will need to be taken at a later date about the future of the non-agricultural Code of Practice.

## Consultation

10. The draft Code of Practice has been seen for comment by a wide range of individuals, government departments, the devolved administrations and other stakeholders. A list of those consulted is attached at **Annex A**.

## Presentation

11. The Code is written for professional users of pesticides and, as was the case for the Defra publication, is unlikely to arouse much general interest. It also simply replaces and updates a previous and well-established edition.
12. Since the SE (and Defra) consulted on the issue of giving notice of pesticide spraying to bystanders and occupiers of neighbouring property in 2004, the Royal Commission on Environmental Pollution in its report published in 2005 recommended the introduction of new notification measures. The Code indicates at Section 3.7.3 **Giving notice to bystanders and occupiers of neighbouring property**, that at the time of publication, Scottish Ministers in conjunction with the UK Government are considering their response and advises that, "The outcome may result in the introduction of new laws."
13. With regard to record keeping, since the publication of EC Regulations 852/2004 and 183/2005, it is no longer correct to say that record keeping of pesticide treatments is not a legal requirement. The EC Regulations, which were transposed into Scots Law in 2005/2006, require that those who produce food and animal feed must keep records of pesticide treatments. Section 6.3 **Records of pesticide treatments** gives details of the legislation.
14. The new Code will be announced via a SE press release, and on the SE and HSE websites.

## Costs and Benefits

15. The new Code introduces no new controls and so there are no new associated costs. Users will benefit from a Code that is clearer, more focused and up to date.

## Financial/Resource Implications for HSE

16. The Code is published by SE. No additional costs will be incurred by HSE.

## Other Implications

### Environmental

17. The Code covers protection of wildlife and the environment as well as human health. It was circulated to interested parties within the SE with policy responsibility for various aspects of the code both pre and post consultation. These included Wildlife and Habitats Division, SEPA Sponsorship and Waste Division, Water Environment Division, Land Use and Rural Policy Division, who in turn consulted the Scottish Environment Protection Agency.

## Devolution

18. Department of Agriculture in Northern Ireland are considering issuing their own code under NI legislation in the future.

## **Action / Next Steps**

19.

- a) The Chair to write to the Minister to propose approval of the relevant parts of the Code. A draft letter is at Annex B;
- b) Once the Minister has signalled consent, SE will take the necessary steps to publish the Code. The published Code will contain a notice of Approval on numbered page 14 signed on behalf of the Commission by the HSC Secretary.

## **Contact**

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## List of Recipients

ADAS	Game Conservancy Trust
Advisory Committee on Pesticides	Glasgow Caledonian University
AEA	Greenpeace (UK) Ltd
Agricultural Industries Confederation	Hardi International
Agri-Environment Directorate	Health and Safety Executive
Amenity Forum	Home-Grown Cereals Authority
Association of Applied Biologists	Horticultural Trade Association
Association of Independent Crop Consultants	Horticultural Development Council
BASIS (Registration) Ltd	Horticulture Research International
Bayer Environmental Science	HSC - Agriculture Industry Advisory Committee
BBSRC	IEEM
BCPC	IGER
BIBRA International	ILAM Scotland
BMA Scotland	Industrial Pesticides
British Association of Landscape Industries	Inland Waterways Association
British Pest Control Association	Institute of Biology
British Potato Council	Institute of Chartered Foresters
British Trust for Ornithology	Institute of Fisheries Management
Cairngorms National Park Authority	Institute of Freshwater Ecology, Windermere Laboratory
CBI Scotland	Institute of Groundskeepers
Centre for Aquatic plant Management	Institute of Horticulture
Chartered Institute of Waste Management	Institute of Occupational Health
Chemical Industries Association Ltd	Institute of Professional Soil Scientists
Civil Aviation Authority	Institute of Sport & Recreation Management (Scotland)
Commission for Racial Equality Scotland	Institution of Water and Environmental Management
Complete Weed Control Ltd.	International Pesticide Application Research Centre
Consumers Association	Joint Nature Conservation Committee
Copyright Libraries Agency	LACORS
COSLA	LANTRA
Countryside Agency	LEAF
Countryside Commission	Loch Lomond & The Trossachs National Park Authority
CPRE National Office	Macaulay Land Use Research Institute
Crop Protection Association Ltd	Martin Glenn Consultants
CSC Crop Protection Ltd	Myerscough College
CWS Agriculture	NAAC
DEFRA	NABIM
Department for Transport	National Assembly for Wales Agriculture Department
Department of Trade and Industry	National Association of Seed Potato Merchants
Dept of Health	National Dairy Council
Dove Associates	National Farmers Union
English Nature	National Farmers Union Scotland
Environment Agency	National Society for Clean Air (NSCA) Scotland
Environment Agency (Wales)	National Trust for Scotland
European Adjuvant Association	Network Rail
Farming and Wildlife Advisory Group	NHS Health Scotland
Fisheries Research Services	NPTC
Food and Drink Federation	NSTS
Food Standards Agency	Office of Water Services
Forestry and Timber Association	Pesticide Action Network UK
Forestry Commission	Pesticide Safety Directorate
Fresh Produce Consortium (UK)	Pesticides Forum
Friends of the Earth	Ramblers Association

Royal Environmental Health Institute for Scotland  
Royal Scottish Forestry Society  
RSNC  
RSPB Scotland  
Rural Services  
Scottish Agricultural College  
Scottish Association of Young Farmers  
Scottish Beekeepers' Association  
Scottish Biodiversity Forum  
Scottish Centre for Infection and Environmental Health  
Scottish Consumer Council  
Scottish Cricket Union  
Scottish Crop Research Institute  
Scottish Environment Protection Agency  
Scottish Executive EU Office  
Scottish Food Quality Certification Ltd.  
Scottish Football Association  
Scottish Forest Industries Cluster  
Scottish Golf Union  
Scottish Landowners' Federation  
Scottish Local Authorities  
Scottish Natural Heritage  
Scottish Potato Trade Association  
Scottish Rugby Union  
Scottish Rural Property & Business Assoc Limited  
Scottish Seed & Nursery Trade Association  
Scottish Skills Testing Service  
Scottish Sports Association  
Scottish Universities  
Scottish Water  
Scottish Wildlife Trust  
Silsoe Research Institute  
Sports Turf Research Institute  
Sportscotland  
SSPCA  
SoilSurvey and Land Research Centre  
The Water Industry Commission for Scotland  
United Kingdom Forest Products Association  
Visit Scotland  
VOCAL  
VTSC Growers' Association  
Water UK  
Wildlife and Countryside Link  
William Tracey Ltd  
Women in Agriculture  
WRC plc  
WWT

**DRAFT LETTER TO THE PARLIAMENTARY UNDER SECRETARY (LORDS)**

The Lord Hunt of King's Heath OBE  
Parliamentary under Secretary (Lords)  
Department for Work and Pensions  
Richmond House  
79 Whitehall  
London  
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April 2006

**APPROVING THE RELEVANT PARTS OF THE CODE OF PRACTICE FOR USING PLANT PROTECTION PRODUCTS IN SCOTLAND**

I am writing to seek your consent for the Health and Safety Commission to approve the relevant parts of the Code of Practice for using Plant Protection Products in Scotland, as set out on numbered page 14 of the Code of Practice. The Code of Practice will be adopted by virtue of section 16(1) of the Health and Safety at Work etc. Act 1974 (HSWA).

The Code of Practice replaces and updates in Scotland the withdrawn Code of Practice for the Safe Use of Pesticides on Farms and Holdings, which was out of date and misleading in parts. You have already consented to the approval of the equivalent Code for England and Wales, and the Scotland version follows a similar format but reflecting the position there. The new Code will be published by the Scottish Executive, and officials there will be seeking Ministerial approval by Ross Finnie, Minister for Environment and Rural Development once HSC has signalled its approval. As some of the Code is approved under HWSA, the Commission's formal approval is required before the final text can be released for publication.

BILL CALLAGHAN

Chair, Health and Safety Commission

