

Friends of the Earth to Revoke ‘Unlawful’ Bee-Killer Pesticide Permit

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Friends of the Earth has taken the first legal steps towards striking out last week’s emergency approval of bee-harming ‘neonic’ pesticides in England, granted last week despite a Europe-wide ban.

The decision last week by environment secretary Liz Truss to [allow bee-toxic ‘neonic’ pesticides](#) to be used on oilseed rape crops appears to be “unlawful” according to Friends of the Earth.



The allegation comes in a [pre-action letter to Truss](#), sent by the environment campaign group, which names her as prospective defendant in a judicial review action that could see the controversial permit annulled in the High Court.

Lawyers for FoE took the step after Truss’s department, Defra, and the Health and Safety Executive (HSE) failed to supply Friends of the Earth with information on the criteria and process used to permit a ‘derogation’ from the EU’s 2013 partial ban on neonicotinoid

pesticides, despite being asked many times for this information.

The huge public interest in bee decline and pesticide use contrasts with the Government's excessive secrecy and handling of this decision to let bee-harming pesticides back into our fields this autumn", said Paul De Zylva, Friends of the Earth's nature campaigner.

Ministers pledged their decisions would be based on science but it has been hard obtaining information, including about the scientific basis, despite repeat requests.

The derogations were issued on 22nd July after applications by the National Farmers Union (NFU) that claimed widespread crop losses of oilseed rape crops due to infestation by cabbage stem flea beetles.

UK Government has not applied the rules

According to FoE's pre-action letter, *"On the basis of the limited information so far disclosed, Friends of the Earth has serious concerns about the lawfulness of the grant of the authorisation and its compliance with Regulation EC 1107/2009 ... and in particular Article 53 of that regulation, concerning the placing of plant protection products on the market ...*

No information or evidence has been provided to us (or made public more generally) in relation to whether or how the Regulation (and in particular Article 53, which governs such emergency authorisations) has been considered or applied.

Importantly, the Authorisations appear to contain no conditions through which the Secretary of State has addressed the concerns relating to high acute risks to bees set out in Implementing Regulation 485/2013, which have led to the prohibition of the uses in question.

We have no information on whether these concerns were considered in the course of approving the application ... The decision on its face is therefore unlawful.

Article 53 of the Regulation that banned certain uses of neonicotinoid pesticides allows EU member states to 'derogate' from the ban for up to 120 days, and permit the pesticides *"for limited and controlled use, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means."*

But FoE contends that the permit issued by Defra does not appear to conform to these criteria. It is difficult to see how the Authorisations meet the requirements of *"limited and controlled"*, they say, since the chemicals may be used across the whole of England, while *"the use of 950 litres per substance has been authorised without any indication of specific limitations in terms of volume or area."*

Moreover, the Authorisations *"require distribution to areas of highest risk but the identification of these appears to be left to the applicant, without any involvement on the part of DEFRA, despite this having been a concern expressed specifically by the ECP (Expert Committee on Pesticides)."*

Forcing the release of information

The immediate effect of the action will be to put pressure on Defra to release the information it has so far kept secret, as the letter points out, *“in accordance with the Secretary of State’s duty of candour in judicial review proceedings.”*

Release is requested no later than Monday next week, to include all information about the Government’s basis for this decision and details of what controls are in place regarding the use of pesticides, as well as other documents yet to be released into the public domain:

- the NFU’s applications to use the neonic pesticides;
- documents placed before the ECP at its meeting on 7 July, and the record of its discussions and ultimate decision;
- any document recording the reasons behind the approval decisions, including details of how the requirements of Article 53 or other requirements of EU law were fulfilled;
- any relevant briefing or submissions provided to ministers before the final approval decisions were taken;
- the correspondence with the NFU regarding the approval decisions and compliance with the conditions set out in the decisions.

Once FoE lawyers have been able to review the documents, they will take a view on whether or not the government did, in fact, comply with the Regulation and other EU laws, and whether or not to proceed with the judicial review.

The letter also suggests that the government could avoid judicial review by releasing all the documents, revoking the Authorisations and considering the NFU’s applications afresh.

Scientific evidence

Scientific research has proven that the [‘neonics’ are highly toxic to bees](#) even at very low concentrations, and most especially to wild species including bumblebees.

In January 2013 the European Food Safety Authority [announced that](#) neonicotinoids pose *“an unacceptable risk”* to bees, and in April the EU approved a two-year moratorium on the most damaging uses of three of the chemicals, clothianidin, imidacloprid and thiamethoxam, to take effect in December.

Earlier this year the European Academies Science Advisory Council concluded that these banned pesticides [don’t just kill bees, they wreak “havoc” with other insects](#) and plants in the wider countryside too.

This followed earlier work published in July 2014 showing that the impact of neonics [reverberated through the entire food chain](#), even hitting bird populations.

Oliver Tickell edits *The Ecologist*.

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