

EXPLANATORY MEMORANDUM TO
THE WATER RESOURCES (CONTROL OF POLLUTION) (SILAGE, SLURRY AND
AGRICULTURAL FUEL OIL) (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 1091

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs 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 To amend the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (“the SSAFO Regulations”) in order to clarify the offences which constitute a contravention of the SSAFO Regulations.

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

- 3.1 The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2010 (“the SSAFO Amendment Regulations”) have been made to correct 3 defects identified by the Joint Committee on Statutory Instruments (JCSI) in relation to the SSAFO Regulations, including two affecting offence provisions, and one other defect.

- 3.2 The SSAFO Amendment Regulations should come into force on 6th April 2010 (the same day as the SSAFO Regulations). This will break the 21 day rule for laying instruments in Parliament in advance of the commencement date, but we consider that the need to have effective offence provisions so that farmers can clearly understand their obligations justifies this approach.

4. **Legislative Context**

- 4.1 The SSAFO Regulations were made on 4th March 2010 and came into force on 6th April 2010.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England.

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 SSAFO Regulations were introduced to minimise the risk of water pollution from silage, slurry and agricultural fuel oils by setting minimum standards for the design, construction and maintenance of structures used to store these substances.

7.2 The Regulations require that all new (and substantially reconstructed or enlarged stores) are:

- sited at least 10 metres from any inland freshwaters or coastal waters;
- designed to last for at least 20 years, with maintenance (except below ground silage effluent tanks which are required to last for 20 years without maintenance); and
- designed and built to meet specific standards and requirements.

7.3 These technical aspects of the SSAFO Regulations are key to the enforceability of the Nitrates Pollution Prevention Regulations 2008 (S.I. 2008/2349) (“the Nitrates Regulations”), which implement the Nitrates Directive. The Nitrates Regulations require farmers in areas designed as Nitrate Vulnerable Zones, to provide sufficient storage facilities to store all slurry produced by livestock during a period of 6 months for pigs and 5 months for cattle, and to store all poultry manure produced during a period of 6 months.

7.4 These storage facilities must be constructed to the standards specified in the SSAFO Regulations. Therefore, to ensure effective enforcement of our nitrates policy, it is important that the SSAFO Regulations have been made so that enforcement action can be taken where necessary.

- *Consolidation*

7.5 Not applicable.

8. Consultation outcome

8.1 As the SSAFO Amendment Regulations are being made to correct technical defects identified by the JCSI, the Department has not undertaken a public consultation. The requirements imposed by the SSAFO Regulations have not been amended and therefore they impose no additional burden.

9. Guidance

9.1 Guidance to support farmers in complying with the SSAFO Regulations will be updated and re-issued.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it imposes no additional burden.

11. Regulating small business

11.1 The legislation applies to small business. No assessment of the impact has been undertaken as the amendments of the SSAFO Regulations introduce no additional burden.

12. Monitoring & review

12.1 The Government is required, under the Nitrates Directive, to review the effectiveness of the Nitrates Action Programme every four years. The next review is due in 2012, and this will consider whether there is a need to amend the SSAFO Regulations, although changes are not anticipated.

13. Contact

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