

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

2010 No. 639

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.

2. Purpose of the instrument

2.1 The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (“the SSAFO Regulations”) establish certain containment and construction standards for silage-making and storage, slurry storage systems and agricultural fuel oil stores, in order to reduce incidents of water pollution.

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

3.1 None.

4. Legislative Context

4.1 A previous version of the SSAFO Regulations was made in 1991¹, and amended in 1997². However, the SSAFO Regulations need to be re-made because the Department has become aware that they were not notified to the EU Technical Standards Committee in 1991 (nor when they were amended in 1997).

4.2 It is a requirement of the Technical Standards and Regulations Directive³ that Member States must notify the Commission of any proposed regulations which prescribe technical specifications. The intention of this requirement is to expose any potential new trade barriers.

4.3 To ensure the enforceability of the SSAFO Regulations, they are being re-made according to the correct procedure. This is an administrative exercise and the obligations imposed by the SSAFO Regulations have not changed.

4.4 The SSAFO Regulations were notified to the EU Technical Standards Committee on 30th November 2009 and the notification period ended on 1st March 2010.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Both Scotland⁴ and Northern Ireland⁵ have their own equivalent SSAFO Regulations (the correct notification procedures to the European Commission were followed in making them). The 1991 SSAFO Regulations apply in England and Wales, but it is proposed that the new Regulations should apply to England only. This is

¹ Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 (SI 1991/324)

² Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Amendment) Regulations 1997 (SI 1997/547)

³ Directive 98/34/EC (formerly Directive 83/189/EEC)

⁴ Control of Pollution (Silage, Slurry & Agricultural Fuel Oil) (Scotland) Regulations 2003 (SSI 2003/531)

⁵ Control of Pollution (Silage, Slurry & Agricultural Fuel Oil) (Northern Ireland) Regulations 2003 (SR 2003/319)

consistent with the approach taken on other Statutory Instruments. Similar Regulations have been prepared for Wales, which have also been notified to the EC Technical Standards Committee.

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 (“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 according to the correct procedure so that enforcement action can be taken where necessary.

- *Consolidation*

7.5 Not applicable. The SSAFO Regulations revoke and replace the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 and the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Amendment) Regulations 1997.

8. Consultation outcome

8.1 As the SSAFO Regulations are being re-made simply for administrative reasons, 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 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 re-making of the SSAFO Regulations introduces 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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