

EXPLANATORY MEMORANDUM TO
THE NITRATE POLLUTION PREVENTION (DESIGNATION AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2013

2013 No. 2619

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 These Regulations amend the Nitrate Pollution Prevention Regulations 2008 (“the 2008 Regulations”), which give effect in England to Council Directive 91/676/EEC (OJ L375, 31.12.1991, p. 1) (“the Nitrates Directive”). They give statutory effect to the revised designation of nitrate vulnerable zones in England, and make minor amendments to other provisions. These Regulations complete the implementation of the Department’s four-yearly review of measures to address nitrate pollution from agriculture, required under the Nitrates Directive.

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

3.1 The Department plans to consolidate and re-make the 2008 Regulations at the next review of the nitrate vulnerable zone designations and the measures to be followed by farmers within the zones, and so it has not produced a consolidated set of regulations on this occasion. By the time these Regulations are in force, the GOV.UK website will contain a consolidated version of the 2008 Regulations so that the effect of these amendments is clear.

4. Legislative Context

4.1 We are required by the Nitrates Directive to set action programme measures in areas of land draining into waters designated as vulnerable to nitrate pollution. Article 5.7 requires the action programme measures to be reviewed every four years, and revised if necessary. Article 3.4 requires Member States to review the designation of nitrate vulnerable zones. These Regulations amend the 2008 Regulations to give statutory effect to the Secretary of State’s revised zones, and to make minor changes to our action programme measures, mainly to the technical requirements.

4.2 The four-yearly review requires the identification of polluted waters or potentially polluted waters. These are waters where nitrate levels exceed 50mg per litre, or surface waters which are eutrophic¹, or where this could occur if measures under the action programme were

¹ Eutrophication is defined in the Directive as the enrichment of water by nitrogen compounds, causing accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms in the water and water quality.

not put in place. The Directive then requires the designation of the areas of land that drain into those waters as nitrate vulnerable zones.

4.3 The Environment Agency recommended areas for designation in England to the Secretary of State in August 2012. The Secretary of State published his proposals and served notice on owners or occupiers of holdings in the proposed zones. Farmers were able to appeal against the proposed designation of their land. The Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013 (SI 2013/1001, referred to below by its SI number) gave statutory effect to the revised designation of nitrate vulnerable zones, reflecting the outcome of those appeals decided as at the 12th February 2013. With one exception, the outstanding appeals have now been completed and these Regulations provide for revised designations to reflect the outcome of those appeals.

4.4 The four-yearly review must also consider the effectiveness of the action programme. The measures of the action programme impose certain farming practices within nitrate vulnerable zones intended to avoid and reduce pollution of waters from nitrates. SI 2013/1001 gave effect to the outcome of this review. These Regulations make a small number of further, minor amendments to the 2008 Regulations.

4.5 The most substantive of these amendments relates to applications made under regulation 13A of the 2008 Regulations for a derogation from requirements which effectively limit livestock density. (Information about this was set out in paragraphs 4.5 to 4.7 of the Explanatory Memorandum laid with SI 2013/1001, which is attached for reference.) The amendment made by these Regulations imposes an obligation on the Environment Agency to refuse an application for a derogation where the farmer has been found in breach of derogation requirements of Schedule 4 to the 2008 Regulations, and where no further possibility of successful appeal against conviction, or against an enforcement notice or penalty under article 10 of the Environmental Civil Sanctions (England) Order 2010, is available.

4.6 Other amendments make changes to technical requirements, including allowing greater flexibility in the calculation of the nitrogen spreading limits in relation to horticultural crops under regulation 16 of the 2008 Regulations, and slightly revising the categorisation in Table 1 of Schedule 1 to those Regulations for the calculation of nitrogen in manure produced by various types of grazing cattle.

4.7 Welsh Ministers laid Regulations in October 2013 before the National Assembly for Wales revising the designation of nitrate vulnerable zones and amending the action programme measures which will apply to farmers in Welsh nitrate vulnerable zones. Further minor amending Regulations are planned in early 2014 in Wales. Plans in relation to Scotland and Northern Ireland were described in the attached Explanatory Memorandum laid with SI 2013/1001.

5. Territorial Extent and Application

5.1 This instrument applies in England only.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Nitrates Directive is an environmental measure that aims to reduce water pollution caused or induced by nitrates from agricultural sources, and to prevent such pollution in the future.

7.2 The outcome of Defra's review of designations undertaken in England has been described in the (attached) Explanatory Memorandum laid with SI 2013/1001. The further revisions to the designated zones provided for in these Regulations to reflect the outcome of the recent appeals affect only very, very small areas of land and do not alter the figure of a net reduction of 4% in the total area of the nitrate vulnerable zones in England which were given in that Explanatory Memorandum.

7.3 Amendments made by these Regulations to the Action Programme measures include a new obligation on the Environment Agency to refuse an application for a derogation under regulation 13A. The derogation benefits grassland farmers whose holding is sown with 80% grass. Derogation holders, in effect, may stock a greater number of livestock on their holdings without breaching the regulations setting maximum limits for total nitrogen spread on a holding. Derogations are subject to holders meeting various requirements set out in Schedule 4. Where the farmer has been found in the previous derogation year to be in breach of Schedule 4 to the 2008 Regulations, and where no further possibility of successful appeal is available, the Environment Agency must refuse the application. There are slight variations where the breach is established after the date an application is made.

7.4 The Regulations make other minor amendments to the technical requirements of the 2008 Regulations. In particular, regulation 16 of the 2008 Regulations is amended. This regulation limits the total amount of nitrogen that may be applied to certain crops (listed in regulation 16 of the 2008 Regulations). SI 2013/1001 added a number of horticultural crops to that list. The amendment in these Regulations allows horticultural crops to be grouped together for purposes of the relevant calculations, giving farmers more flexibility in meeting the nitrogen spreading limits.

7.5 The Regulations amend the Nitrate Pollution Prevention Regulations 2008, as amended by the Nitrate Pollution Prevention (Amendment) Regulations 2009, the Nitrate Pollution Prevention (Amendment) Regulations 2012 and Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013. The Department plans to consolidate the legislation at the next review of action programmes and designation of nitrate vulnerable zones as required under the Nitrates Directive.

8. Consultation outcome

8.1 In December 2011, the Government consulted on proposals to amend its implementation of the Nitrates Directive. The consultation closed on 16 March 2012. The consultation focused on the proposed changes to the farm practice requirements (the action programme), and whether we should continue designating discrete nitrate vulnerable zones or to designate the whole of England. SI 2013/1001 came into force in May 2013 to give effect to Government policy following consideration of the consultation responses.

8.2 Amendments introduced in those Regulations also included two provisions which were not consulted on, one of which was the extension of regulation 16 limits on the application of nitrogen to certain horticultural crops. Since May 2013, there has been on-going dialogue with farming representatives as to matters now reflected in the amendments in these Regulations. This includes the amendment to regulation 16 of the 2008 Regulations which will give greater flexibility to horticultural farmers in meeting the limits for nitrogen application to their crops. There has also been on-going dialogue with farming representatives who have accepted that the Regulations will remain unchanged for field heaps.

8.3 Defra sought a screening opinion on the need for a Strategic Environmental Assessment for the changes provided for in SI 2013/1001. The Environment Agency, English Heritage and Natural England all confirmed that no such assessment was needed.

9. Guidance

9.1 The Government updated the guidance material in June 2013 to include the changes introduced by SI 2013/1001. The guidance material has been further updated to include the amendments from these Regulations. The guidance has been available since the beginning of November 2013 for owners and occupiers of holdings, which are in areas of land in England designated as nitrate vulnerable zones, to enable them to follow and apply the provisions in these Regulations.

10. Impact

10.1 No impact assessment has been carried out in respect of these Regulations. The Impact Assessment for SI 2013/1001 highlighted that the review of the nitrate vulnerable zone designation resulted in approximately 10,000 farmers no longer being required to comply with the 2008 Regulations. The Impact Assessment also stated that approximately 2,500 new farmers are included by the new designations. The farmer numbers in nitrate vulnerable zones being designated through these Regulations remain in line with the above estimates.

10.2 The technical changes will not directly impose new burdens on farmers already in nitrate vulnerable zones. Farm economists' advice is that these measures will have zero or negligible costs. We therefore have not updated the Impact Assessment cost-benefit assessment.

10.3 The designation of the nitrate vulnerable zones and the amendment of the action programme established in these Regulations are sufficient to fulfil the environmental objectives of the Nitrates Directive while as far as possible supporting a sustainable farming industry.

11. Regulating small business

11.1 The Regulations apply to small businesses. The businesses affected are farming businesses, and the great majority of these are defined as small. Farmers affected by these Regulations are already within nitrate vulnerable zones.

11.2 The impact on small businesses has been minimised.

12. Monitoring & review

12.1 The Nitrates Directive requires Member States to carry out four-yearly reviews of designations and the effectiveness of the action programme measures. The next such review will be undertaken in 2015/16. A general regulatory review of the need for and effectiveness of the Regulations is due in 2017.

13. Contact

13.1 Alex Bowness at the Department for Environment, Food & Rural Affairs (tel: 020 7238 6710 or email: alex.bowness@defra.gsi.gov.uk) can answer any queries regarding this instrument.