

## EXPLANATORY MEMORANDUM

### THE NITRATE POLLUTION PREVENTION REGULATIONS 2015

#### 2015 No. 668

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. It contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

2.1 The Nitrate Pollution Prevention Regulations 2015 (the “Nitrates Regulations”) consolidate the following Regulations:-

- The Nitrate Pollution Prevention Regulations 2008 (“the 2008 Regulations”);
- regulations 2 to 10 of the Nitrate Pollution Prevention (Amendment) Regulations 2009;
- regulation 10 of the Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010;
- the Nitrate Pollution Prevention (Amendment) Regulations 2012;
- regulations 2 to 25 of the Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013;
- the Nitrate Pollution Prevention (Designation and Miscellaneous Amendments) Regulations 2013.

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

3.1 The Joint Committee will wish to note that these Regulations consolidate all the various amendments made to the 2008 Regulations. This honours a commitment given in the Explanatory Memorandum to the Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013 (S.I 2013/1001).

3.2 The Committee will also note that two drafting errors identified by the Committee in the Nitrate Pollution Prevention (Designation and Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2619) and accepted by the Department in a Memorandum dated 5<sup>th</sup> November 2013, have been addressed in the consolidation:

- Regulation 37(10) is to address the JCSI’s first point, about the revocation of refusal of a derogation. Where the Environment Agency decides not to revoke a derogation granted to an applicant, it must now refuse that applicant’s next derogation application.
- Regulation 37(7) is no longer subject to the interpretation provision that was originally in regulation 13A(5C) of the 2008 Regulations.

3.3 However, it should be noted that no detailed review of the 2008 Regulations has taken place, and the Nitrates Regulations make no substantive changes to existing policies or procedures. Such a review is under way, and we aim to introduce revised

regulations, if necessary, in January 2017. In the meantime, we believe the consolidated Nitrates Regulations are a significant improvement.

#### **4. Legislative context**

4.1 The Nitrates Regulations, which are made under section 2(2) of the European Communities Act 1972, are the principal means by which Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ No. L375, 31.12.1991,p1) is implemented.

4.2 Some limited aspects of the Directive (on the construction of storage vessels) are implemented through the Water Resources (Control of Pollution)(Silage, Slurry and Agricultural Fuel Oil)(England) Regulations 2010.

4.3 A Transposition Note has not been prepared because the consolidation of the 2008 Regulations does not transpose any new EU legal requirements.

#### **5. Territorial extent and application**

5.1 This instrument covers England only. The devolved administrations in Wales, Scotland and Northern Ireland are responsible for the implementation of European environmental legislation in their respective territories, and have therefore made their own statutory instruments.

#### **6. European Convention on Human Rights**

6.1 The Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Nitrate Pollution Prevention Regulations 2015 are compatible with the Convention rights.

#### **7. Policy background**

7.1 The objective of the Nitrates Directive is to reduce nitrate pollution of fresh water by farming activity. It does so by identifying land that drains to nitrate-polluted waters, and by requiring farmers on that land to adopt farming practices designed to reduce the risk of causing such pollution. The practices include:

- carefully planning when and how to use manufactured and organic fertilisers (including manures), and matching the amount of fertiliser applied to how much each crop needs;
- avoiding using manufactured fertilisers and the most polluting organic manures at high risk times or in high risk places – broadly, in autumn and early winter and, for example, when the ground is waterlogged or too close to watercourses;
- safely storing any manures that cannot be used in autumn and early winter until conditions are right for their use;
- limiting the total amount of manure used on farm, and ensuring it is carefully applied when it is used;
- keeping records of what has been done on farm, so that compliance can be checked efficiently.

7.2 To adequately cover the wide range of situations on farms across the country the rules are carefully targeted to identify and address different pollution risks. This necessarily makes the current Regulations quite complicated. Moreover, since they

were made in 2008 they have been amended five times to reflect changes in the evolving evidence base and further refinements in how the rules are targeted. As a result, the current Regulations are not easy to follow.

7.3 Defra has addressed this to some extent by publishing an informal consolidation of the Regulations which brings the rules into one document. However, this has no legal standing and the Department recognises the need to improve the transparency of the rules. This consolidation therefore meets that need.

7.4 The consolidation makes no substantive changes to the intention or effect of the rules, though some structural changes and drafting improvements have been included to make the Regulations as accessible as possible. Some references to other legislation and to organisations have also been updated.

## **8. Consultation outcome**

8.1 No public consultation was considered necessary as the consolidation makes no policy changes to the Regulations. There were therefore no choices to put to potential consultees.

## **9. Guidance**

9.1 There is already considerable guidance aimed specifically at farmers and their advisors on the meaning of the Regulations. As this does not refer to individual regulations it will remain valid after the consolidation comes into force.

## **10. Impact**

10.1 Because the consolidation contains no substantive changes to policy it will have no impact in terms of what farmers must do. However, the purpose of consolidation is to make the legislation clearer and more accessible to farmers and others, and thereby to promote greater understanding and compliance.

## **11. Regulating small businesses**

11.1 The Regulations have no significant additional impact on small businesses over and above that which arises from the 2008 Regulations.

## **12. Monitoring and review**

12.1 The Nitrates Regulations will be subject to regular review, not least because the underlying EU legislation requires implementation to be reviewed at least every four years. The next review is already under way, with amended Regulations, if necessary, intended to enter into force in January 2017.

## **13. Contacts**

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