

**EXPLANATORY MEMORANDUM TO**  
**THE NITRATE POLLUTION PREVENTION (AMENDMENT) REGULATIONS**  
**2016**

**2016 No. 1190**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The instrument amends the Nitrate Pollution Prevention Regulations 2015 (“the 2015 Regulations”), primarily to update the designation of Nitrate Vulnerable Zones (“NVZs”) for 2017 to 2020 and to make some adjustments to the associated procedure. The instrument also makes some minor amendments to the 2015 Regulations.

**3. Matters of special interest to Parliament**

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

- 3.1 The instrument addresses an issue with the 2015 Regulations identified by the Committee in its [3rd Report of 2015/16](#). The Department committed to clarify which regulations the offence provision applies to.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2015 Regulations 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 A Transposition Note has not been prepared for this instrument as it does not substantively change the transposition of the Directive.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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 objective of Council Directive 91/676/EEC (the Nitrates Directive) is to reduce nitrate pollution of fresh water by farming activity. It does so by requiring the identification of land that drains to nitrate-polluted waters as NVZs, and by requiring farmers in NVZs to be subject to a programme of measures (the Action Programme).
- 7.2 The Secretary of State is required to review NVZ designations in England at least every four years and, where necessary, revise or add to the designated NVZs. The current NVZs must be revised or added to before 1st January 2017. The designation is based on scientific evidence to identify the areas where nitrate pollution from agriculture is present.
- 7.3 A review took place in 2016, during which the Environment Agency made recommendations to the Secretary of State on which areas to designate for 2017 to 2020. The methodologies applied in the review are published on GOV.UK. <https://www.gov.uk/guidance/nutrient-management-nitrate-vulnerable-zones>. The Secretary of State has accepted the recommendations, and on that basis is revising the NVZ designation by designating some new areas as NVZs and de-designating others. The overall area of designated land will remain around 58% of land in England. The instrument amends the 2015 Regulations to ensure that the rules apply to holdings in the revised NVZs. It also introduces transitional arrangements for those that are in or partially in a NVZ for the first time, so that the rules will not apply immediately.
- 7.4 The Secretary of State sends written notice of the NVZ designation to any person appearing to be the owner or occupier of a relevant agricultural holding. For the 2017 designation, notices are planned to be issued during January and February 2017 for operational reasons. There is also a minor change to the information to be specified in a notice because details of the designation for a particular NVZ are available through the Agency's website. The 2015 Regulations are updated to reflect these arrangements.
- 7.5 As a result, the amendments also extend to 20 March 2017 the period for applying for a derogation which is available to grassland farmers who meet certain conditions.
- 7.6 The Department intends to undertake policy development and engage with stakeholders to inform how pollution and prevention measures for nitrates from agricultural sources may be delivered in future after EU Exit. These measures also need to be developed alongside wider agricultural reforms and the Government's longer term 25 year plans for Food and Farming, and the Environment which are to be consulted on during 2017. For these reasons the regulatory review of the Nitrates Regulations set for 2017 is being deferred to 2020 and will be undertaken as part of that longer term policy development. The 2015 Regulations are amended to reflect this.
- 7.7 The instrument also makes a number of minor amendments. These include:
- updating the definition of a “new holding”;
  - removing spent transitional provisions;
  - reinstating a requirement to make certain records by a deadline (which was not needed in the 2015 Regulations because the deadline for existing holdings had already passed.);

- clarifying which regulations can lead to an offence if not complied with by the occupier of a holding or another person on that holding.

### ***Consolidation***

7.8 The 2015 Regulations were a consolidation of the previous Regulations dating from 2008 and regulations that amended them. This is the first time the 2015 Regulations are being amended so a consolidation is not considered necessary.

## **8. Consultation outcome**

8.1 The NVZ designation is consistent with existing policy and these amendments do not materially change the 2015 Regulations. Consultation was not therefore needed. Where farmers believe their land should not have been designated as an NVZ, the 2015 Regulations include a right to appeal to the First-tier Tribunal General Regulatory Chamber (that is retained). The Secretary of State will be reviewing the Action Programme measures in 2017 and any changes proposed will be subject to public consultation.

## **9. Guidance**

9.1 There is already considerable guidance aimed specifically at farmers and their advisors on the meaning of the 2015 Regulations. Guidance on the NVZ designation and how to appeal has been published on GOV.UK at <https://www.gov.uk/guidance/nutrient-management-nitrate-vulnerable-zones>

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies at this point. The rules applying to those in NVZs are not being changed by this instrument, and the transitional arrangements ensure that there will be no impact on farmers newly in NVZs during the first year after designation. The impact of the designation changes will be assessed as part of the review of Action Programme measures.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to apply transitional arrangements to help farmers with holdings newly in a NVZ to adjust their farming practice. The Regulations have no significant additional impact on small businesses over and above that which arises from the 2015 Regulations.

## **12. Monitoring & review**

12.1 The 2015 Regulations require the NVZ designation to be reviewed every four years. The next review will be held in 2020. The 2015 Regulations themselves will also be reviewed by 2020 in accordance with the review clause, as amended by this instrument.

### **13. Contact**

- 13.1 Alison Gadsby at the Department for Environment, Food and Rural Affairs (Tel: 020 8026 2696 or email [alison.gadsby@defra.gsi.gov.uk](mailto:alison.gadsby@defra.gsi.gov.uk)), or Jan Kiernan at the Department for Environment, Food and Rural Affairs (Tel: 020 8026 3316 or email [jan.kiernan@defra.gsi.gov.uk](mailto:jan.kiernan@defra.gsi.gov.uk)).