

2012 No. 1849

AGRICULTURE, ENGLAND

WATER, ENGLAND

The Nitrate Pollution Prevention (Amendment) Regulations
2012

<i>Made</i> - - - -	<i>13th July 2012</i>
<i>Laid before Parliament</i>	<i>16th July 2012</i>
<i>Coming into force</i> - -	<i>7th August 2012</i>

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment and makes the following Regulations under the powers conferred by that section:

Citation and commencement

1. These Regulations—

- (a) may be cited as the Nitrate Pollution Prevention (Amendment) Regulations 2012; and
- (b) come into force on 7th August 2012.

Amendments

2.—(1) The Nitrate Pollution Prevention Regulations 2008^(c) are amended in accordance with this regulation.

(2) In regulation 6 (interpretation), in the definition of “holding”, for ““holding” means” substitute—

““holding” means, except in the phrase “relevant holding”,”.

(3) Regulations 8 (application for a declaration), 9 (proceedings before the panel) and 10 (effect of panel findings) are omitted.

(4) In Part 2 (designation of nitrate vulnerable zones), after regulation 11 (review of nitrate vulnerable zones), insert—

“Recommendations and proposals in relation to designation

11A.—(1) The Agency must, before 10th August 2012, and subsequently at intervals not exceeding four years, make recommendations to the Secretary of State by reference to the

(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7) and by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) S.I. 2008/2349, amended by S.I. 2009/3160 and S.I. 2010/1159.

matters mentioned in regulation 11(4)(a) to (c) as to which areas of land should be, or should continue to be, designated as nitrate vulnerable zones for the purposes of these Regulations.

(2) In deciding whether to revise or add to the designation of nitrate vulnerable zones for the purposes of regulation 11(4)(d), the Secretary of State must have regard to those recommendations.

(3) Before revising or adding to the designation of nitrate vulnerable zones, the Secretary of State must—

- (a) publish the proposals to revise or add to the designation (“proposals for designation”); and
- (b) send written notice to any person appearing to the Secretary of State to be the owner or occupier of a relevant holding.

(4) A notice mentioned in paragraph (3)(b) must contain—

- (a) a reference to the page on the Agency’s or Secretary of State’s website where the following can be found—
 - (i) the Secretary of State’s proposals for designation;
 - (ii) where the Secretary of State’s proposals for designation rely on the identification in Wales or Scotland of water as polluted, an indication of that fact; and
- (b) information about other means of obtaining the information mentioned in sub-paragraph (a) which do not require access to the internet.

Appeals

11B. An owner or occupier of a relevant holding who is sent a notice under regulation 11A(3)(b) may appeal to the First-tier Tribunal^(a) against the Secretary of State’s proposals for designation referred to in that notice.

Grounds of appeal

11C. For the purposes of rule 22(2)(g) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009^(b), the only grounds of appeal are that the relevant holding or any part of it—

- (a) does not drain into water which—
 - (i) the Secretary of State proposes to identify, or to continue to identify, as polluted; or
 - (ii) has been similarly identified in Wales or Scotland; or
- (b) drains into water which the Secretary of State should not identify, or continue to identify, as polluted.

Effect of a decision of the First-tier Tribunal

11D.—(1) In carrying out the duties set out in regulation 11(4)(a) to (c), and in revising or adding to the designation of nitrate vulnerable zones under regulation 11(4)(d), the Secretary of State must give effect to a decision of the First-tier Tribunal as follows.

(a) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007, c. 15. By virtue of article 3 of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655) the General Regulatory Chamber of the First-tier Tribunal is allocated all functions related to proceedings in respect of the decisions and actions of regulatory bodies which are not allocated to the Health, Education, and Social Care Chamber or to the Tax Chamber by other provisions of that Order.

(b) S.I. 2009/1976, relevant amendments to which were made by S.I. 2010/43 and S.I. 2011/651.

(2) If the First-tier Tribunal upholds an appeal under regulation 11C(a), the Secretary of State must treat the relevant holding, or the part of it in respect of which the appeal was upheld, as not draining into water described in that paragraph.

(3) If the First-tier Tribunal upholds an appeal under regulation 11C(b), the Secretary of State must—

- (a) treat the water described in that paragraph as water which should not be identified, or continue to be identified, as polluted; and
- (b) treat any relevant holding or part of a relevant holding which drains into that water accordingly (regardless of whether the relevant holding's owner or occupier appealed under this Part).

Interpretation of Part 2

11E. In this Part—

“polluted” in relation to water means water that is, or could be affected by pollution in the circumstances described in regulation 11(4)(a);

“proposals for designation” has the meaning given in regulation 11A(3)(a);

“relevant holding” means land and any associated buildings at the disposal of the occupier which are used for the growing of crops in soil or rearing of livestock for agricultural purposes and which land and buildings are wholly or partly within an area which the Secretary of State has proposed should be, or should continue to be, designated as a nitrate vulnerable zone for the purposes of these Regulations.”.

(5) In Part 9 (review), after regulation 47, insert—

“Regulatory review

47A.—(1) The Secretary of State must from time to time, so far as not done pursuant to regulation 46—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

13th July 2012

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace certain provisions in Part 2 of the Nitrate Pollution Prevention Regulations 2008 (S.I. 2008/2349) (“the principal Regulations”) which relate to the designation of nitrate vulnerable zones. The principal Regulations implement in England Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources (OJ No L375, 5.12.1991, p.1).

Regulation 2 revokes regulations 8, 9 and 10 of the principal Regulations and new provisions are inserted as regulations 11A to 11E. These require the Environment Agency to make recommendations to the Secretary of State about the designation of areas of land as nitrate vulnerable zones, and for the Secretary of State to publish her proposals having regard to those recommendations, sending notice to owners or occupiers of holdings in the areas proposed to be designated. The independent panel arrangements in Part 2 of the principal Regulations which applied in relation to the designation of nitrate vulnerable zones in 2008 and 2009 are replaced with a right of appeal to the First-tier Tribunal (see new regulation 11B). The grounds for appeal are that the holding concerned does not drain into water identified as polluted, or that the water it does drain into should not be identified by the Secretary of State as being polluted. New regulation 11C sets out the grounds of appeal. New regulation 11D provides for the effect of a decision of the Tribunal when the Secretary of State revises or adds to the designation of nitrate vulnerable zones under regulation 11(4)(d).

Appeals under the principal Regulations (as amended by these Regulations) and the process for bringing an appeal are also governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976 (L.20)) which provide for appeal proceedings to be begun within 28 days of the date on which notice is sent.

Regulation 2 also introduces a new requirement for the Secretary of State to review the operation and effect of the principal Regulations and publish a report within five years after they come into force and at intervals not exceeding five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

No impact assessment has been carried out in respect of these Regulations as no impact is foreseen on the business or voluntary sector.

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