Changes to legislation: *The Nitrate Pollution Prevention Regulations 2015 is up to date with all changes known to be in force on or before 19 October 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 668

AGRICULTURE, ENGLAND
WATER, ENGLAND

The Nitrate Pollution Prevention Regulations 2015

Made - - - -	*9th March 2015*
Laid before Parliament	*12th March 2015*
Coming into force - -	*1st May 2015*

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**), being designated(**2**) in relation to the environment, having taken into account available scientific and technical data, mainly with reference to the respective nitrogen contributions originating from agricultural and other sources, and the environmental conditions of the nitrate vulnerable zones in England as required by Article 5(3) of Council Directive 91/676/EEC (concerning the protection of waters against pollution caused by nitrates from agricultural sources)(**3**) makes the following Regulations:

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Nitrate Pollution Prevention Regulations 2015.

(2) These Regulations come into force on 1st May 2015.

(3) These Regulations apply in relation to England only.

(4) Parts 3 to 8 apply only in relation to holdings that are in nitrate vulnerable zones designated for the purposes of these Regulations (see regulation 3).

Interpretation

2.—(1) In these Regulations—

(**1**) 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).
(**2**) SI 2008/301.
(**3**) OJ No. L 375, 31.12.1991, p.1

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"the Agency" means the Environment Agency;

"agricultural" has the meaning given by section 109(3) of the Agriculture Act 1947(**4**);

"agricultural area" means agricultural land used for agricultural purposes;

"anaerobic digestion" has the meaning given in paragraph 1 of section 1.1 of Chapter 1 of Part 2 of Schedule 1 to **[**F1the Environmental Permitting (England and Wales) Regulations 2016**]**;

"derogated holding" means a holding over which a derogation has effect;

"derogation" and "derogation conditions" each have the meaning given by regulation 36;

"eutrophic", in relation to water, means enriched by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life that produces an undesirable disturbance to the balance of organisms present in the water and to the quality of the water;

"FACTS adviser" means a person who is a member of the Fertiliser Advisers Certification and Training Scheme(**5**) and qualified to advise on matters relating to crop nutrient management;

"fertilisation plan" has the meaning given by regulation 10(1)(c) (and see also paragraph 4 of Schedule 3);

"grass" includes—

(a) permanent grassland or temporary grassland (with "temporary" meaning for a period of less than four years) which exists between the sowing and ploughing of the grass, and

(b) crops under-sown with grass,

but does not include grassland with at least 50% clover;

"greenhouse" means a structure such as a glasshouse or polytunnel in which crops are grown under cover in an enclosed space, but does not include a structure in which livestock are kept;

"holding" (except in the phrase "relevant holding", as to which see regulation 5(5)) means all the land located within a nitrate vulnerable zone and its associated buildings which are at the disposal of the occupier and which are used for the growing of crops in soil or rearing of livestock for agricultural purposes;

"livestock" means cattle, sheep, goats, deer, horses, poultry or pigs as specified in Schedule 1;

"manufactured nitrogen fertiliser" means a nitrogen fertiliser (other than organic manure) manufactured by an industrial process;

"manufactured phosphate fertiliser" means a phosphate fertiliser (other than organic manure) manufactured by an industrial process;

[F2"new holding" means—

(a) in the case of the designation of nitrate vulnerable zones which took place on 31st December 2016, land and its associated buildings which became a holding on that date (and which were not a holding immediately before that date); and

(b) following any subsequent review under regulation 4(5), land and its associated buildings which become a holding as the result of the Secretary of State revising or adding to the designation of nitrate vulnerable zones and which were not a holding immediately before the date of that revision or addition;**]**

"nitrogen fertiliser" means a substance containing one or more nitrogen compounds used on land to enhance growth of vegetation;

"organic manure" means a nitrogen fertiliser or phosphate fertiliser derived from animal, plant or human sources (and includes livestock manure);

(**4**) 1947 c.48

(**5**) The scheme is administered by Basis Registration Ltd, and a list of qualified persons is available from them on request at http://www.basis-reg.com/contact.aspx

"phosphate fertiliser" means any substance containing one or more phosphorus compounds used on land to enhance growth of vegetation;

"poultry" means chicken, turkey, duck or ostrich as specified in Schedule 1;

"risk map" has the meaning given in regulation 15(1);

"sandy soil" means soil over sandstone, and any other soil in which—

(a) in the layer up to 40cm deep, there are—

(i) more than 50% by weight of particles from 0.06 to 2mm in diameter,

(ii) less than 18% by weight of particles less than 0.02mm diameter, and

(iii) less than 5% by weight of organic carbon, and

(b) in the layer from 40 to 80cm deep, there are—

(i) more than 70% by weight of particles from 0.06 to 2mm in diameter,

(ii) less than 15% by weight of particles less than 0.02mm diameter, and

(iii) less than 5% by weight of organic carbon;

"shallow soil" means soil that is less than **[**F3**]**40cm**]** deep;

"slurry" means excreta produced by livestock (other than poultry) while in a yard or building (including any bedding, rainwater or washings mixed with it) that has a consistency that allows it to be pumped or discharged by gravity (and in the case of excreta separated into its liquid and solid fractions, the slurry is the liquid fraction);

"spreading", in relation to land, includes applying to the surface of the land, injecting into the land or mixing with the surface layers of the land, but does not include the direct deposit of excreta on to land by animals.

(2) A reference in these Regulations to polluted water is (subject to regulation 4(6)) a reference to water which—

(a) is freshwater and contains a concentration of nitrates greater than 50 mg/l (or could do so if these Regulations were not to apply there), or

(b) is eutrophic (or may in the near future become so if these Regulations were not to apply there),

and a reference in these Regulations to pollution, in relation to water, is to be read accordingly.

(3) In these Regulations—

"Council Directive 91/676/EEC" means Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources(**6**);

"Council Directive 98/83/EC" means Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption(**7**)**[**F4, as last amended by Commission Directive (EU) 2015/1787**]**;

"Council Regulation (EC) 1698/2005" means Council Regulation (EC) No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development(**8**);

(**6**) OJ No. L 375, 31.12.1991, p.1.
(**7**) OJ No. L 330, 5.12.1998, p.32.
(**8**) OJ No. L 277, 21.10.2005, p.1. This was repealed by Regulation (EU) 1305/2013 subject to transitional provisions (see Article 88).

"Council Regulation (EC) 834/2007" means Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91(**9**);

"Directive 2000/60/EC" means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy(**10**);

"Regulation (EU) 1305/2013" means Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development and repealing Council Regulation (EC) No 1698/2005(**11**).

F1 Words in reg. 2(1) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 87** (with regs. 1(3), 77-79, Sch. 4)
F2 Words in reg. 2(1) substituted (29.3.2019) by The Environment, Food and Rural Affairs (Miscellaneous Amendments etc.) Regulations 2019 (S.I. 2019/526), regs. 1(2), **5(2)**
F3 Words in reg. 2(1) substituted (31.12.2016) by The Nitrate Pollution Prevention (Amendment) Regulations 2016 (S.I. 2016/1190), regs. 1(1), **9(1)(b)**
F4 Words in reg. 2(3) inserted (1.6.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **10(2)**

PART 2

Nitrate vulnerable zones

Designation

3.—(1) An area is designated as a nitrate vulnerable zone for the purposes of these Regulations if, as an area of land that drains into polluted waters and contributes to the pollution of those waters, it is marked as such a zone on a relevant map.

[[F5](2) For the purposes of this regulation—

(a) for the period beginning with 1st December 2016 and ending with the day on which the Secretary of State next revises or adds to the designation of nitrate vulnerable zones under regulation 4(5), "relevant map" means a map marked "Nitrate Vulnerable Zones (England) 2017 to 2020" and published on 1st December 2016 on the Agency's website;

(b) following any subsequent review under regulation 4(5), "relevant map" means a map which is published on the Agency's website and which—

(i) is marked "This map identifies those areas of England designated by the Secretary of State as a Nitrate Vulnerable Zone for the purposes of the Nitrate Pollution Prevention Regulations 2015 (England).": and

(ii) specifies the period to which it relates.**]**

[[F6](3) The Agency must make provision for a relevant map to be obtainable by persons without access to the internet.**]**

(**9**) OJ No. L 189, 20.7.2007, p.1.
(**10**) OJ No. L 327, 22.12.2000, p.1.
(**11**) OJ No. L 347, 20.12.2013, p.487.

F5 Reg. 3(2) substituted (29.3.2019) by The Environment, Food and Rural Affairs (Miscellaneous Amendments etc.) Regulations 2019 (S.I. 2019/526), regs. 1(2), **5(3)(a)**

F6 Reg. 3(3) inserted (29.3.2019) by The Environment, Food and Rural Affairs (Miscellaneous Amendments etc.) Regulations 2019 (S.I. 2019/526), regs. 1(2), **5(3)(b)**

Review

4.—(1) The Secretary of State must keep under review the eutrophic state of fresh surface waters, estuarial waters and coastal waters.

(2) The Secretary of State must, before 1st January 2017 and **[**F7before 1st January of every fourth year thereafter**]**, monitor the nitrate concentration in freshwaters over a period of one year—

(a) at sampling stations that are representative of surface water, at least monthly and more frequently during flood periods, and

(b) at sampling stations that are representative of groundwater, at regular intervals and taking into account the provisions of Council Directive 98/83/EC.

(3) But in the case of a sampling station at which the nitrate concentration in all previous samples taken for the purposes of paragraph (2) has been below 25mg/l and no new factor likely to increase the nitrate content has appeared, that paragraph is to be read as if for "2017" there were substituted "2021" and for "every four years" there were substituted "every eight years".

(4) Nitrate concentration must be measured **[**F8by subtracting the amount of nitrite from the amount of total oxidised nitrogen ("TON"), where both nitrite and TON are calculated using the method known as molecular absorption spectrophotometry**]**.

(5) No later than the end of each four-year period provided for under paragraph (2), the Secretary of State must—

(a) identify water that is affected by pollution, or could be if the controls in these Regulations are not applied in the area concerned, using the criteria in Annex I to Council Directive 91/676/EEC,

(b) identify land which drains into those waters, or into water which has been similarly identified in Wales or Scotland, and that contributes to the pollution in those waters,

(c) take into account changes and factors unforeseen at the time of the previous designation, and

(d) if necessary, revise or add to the designation of nitrate vulnerable zones.

(6) In this Part, references to pollution, in relation to water, are to be construed in accordance with paragraph (5)(a).

F7 Words in reg. 4(2) substituted (29.3.2019) by The Environment, Food and Rural Affairs (Miscellaneous Amendments etc.) Regulations 2019 (S.I. 2019/526), regs. 1(2), **5(4)**

F8 Words in reg. 4(4) substituted (1.6.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **10(3)**

Recommendations and proposals

5.—(1) The Agency must, before 10th August 2016 and **[**F9before 10th August of every fourth year thereafter**]**, make recommendations to the Secretary of State by reference to the matters referred to in regulation 4(5)(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.