

2013 No. 2619

AGRICULTURE, ENGLAND

WATER, ENGLAND

**The Nitrate Pollution Prevention (Designation and
Miscellaneous Amendments) Regulations 2013**

<i>Made</i> - - - -	<i>10th October 2013</i>
<i>Laid before Parliament</i>	<i>16th October 2013</i>
<i>Coming into force</i> - -	<i>18th November 2013</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, application and commencement

1. These Regulations—
 - (a) may be cited as the Nitrate Pollution Prevention (Designation and Miscellaneous Amendments) Regulations 2013;
 - (b) apply in relation to England only;
 - (c) come into force on 18th November 2013.

Amendment of the Nitrate Pollution Prevention Regulations 2008

2. The Nitrate Pollution Prevention Regulations 2008^(c) are amended in accordance with these Regulations.

Amendments in respect of the designation of nitrate vulnerable zones

3. In regulation 7 (designation of nitrate vulnerable zones)—
 - (a) for paragraph (1), substitute—

“(1) The areas marked as nitrate vulnerable zones on the maps marked “Nitrate Vulnerable Zones (England 2013) (Revised October 2013)” and stored at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR in unalterable electronic form on digital disk, the disk having

(a) SI 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) SI 2008/2349. Relevant amendments were made by SI 2009/3160, 2010/1159, 2012/1849 and 2013/1001.

been signed on behalf of the Secretary of State and dated 1st October 2013, are designated as nitrate vulnerable zones for the purposes of these Regulations.”;

- (b) omit paragraph (3).

Amendments in respect of the action programme measures

4. In regulation 13A (application for a derogation), after paragraph (5), insert—

“(5A) Subject to paragraphs (5B) and (5C), the Agency must refuse a derogation application in the case of an applicant who has been found in breach of derogation conditions during the calendar year preceding the calendar year in respect of which the derogation is sought.

(5B) Where an applicant is found in breach of derogation conditions after the date of the derogation application but before the calendar year to which the derogation application relates—

- (a) if the application has not already been granted by the time the breach has been found, the Agency may, taking into account the seriousness of the breach,—
 - (i) grant the application, in which case the Agency must refuse any derogation application which is next made by that applicant for a subsequent calendar year; or
 - (ii) refuse the application;
- (b) if the application has been granted when the breach is found, the Agency may, taking into account the seriousness of the breach, revoke the derogation by sending written notice to the applicant before the calendar year for which the derogation was granted.

(5C) In paragraphs (5A) and (5B), reference to an applicant being found in breach of derogation conditions means—

- (a) the applicant has been convicted of an offence under regulation 48 in respect of which no further appeal may be made, or, if an appeal has been made, that appeal was decided against the applicant;
- (b) the applicant has accepted a simple caution;
- (c) a penalty or notice has been imposed under regulation 48A in respect of which no further appeal may be made, or, if an appeal has been made, that appeal was decided against the applicant; or
- (d) the applicant has give the Agency an enforcement undertaking under regulation 48A;
and the offence to which the conviction, simple caution, penalty, notice or undertaking relates arises from a breach of a requirement set out in Schedule 4.”.

5. In regulation 16 (total nitrogen spread on a holding)—

- (a) in the paragraph preceding the table, after “given crop” insert “or group of crops” and after “that crop” insert “or group of crops”;
- (b) in the table for the rows beginning “Asparagus”, until the end of the table, substitute the following rows—

“Asparagus, carrots, radishes, Swedes, individually or in any combination	180	n/a
Celery, courgettes, dwarf beans, lettuce, onions, parsnips, runner beans, sweetcorn, turnips, individually or in any	280	n/a

combination		
Beetroot, Brussels sprouts, cabbage, calabrese, cauliflower, leeks, individually or in any combination	370	n/a”.

6. In regulation 22 (controlling how nitrogen fertiliser is spread), in paragraph (2)—

- (a) for “an average” substitute “a maximum”;
- (b) for “not more than 0.2 millimetres”, substitute “1 millimetre”.

Amendments to Schedules

7.—(1) The Schedules are amended in accordance with this regulation.

(2) In Table 1 (grazing livestock) of Schedule 1 (amount of manure, nitrogen and phosphate produced by grazing livestock and non-grazing livestock), in the entries headed “Cattle”—

- (a) for “Calf (all categories except veal) up to 3 months”, substitute “Calf (all categories except veal) younger than 2 months”;
- (b) in the remaining entries—
 - (i) wherever it appears, for “3 months” substitute “2 months”;
 - (ii) wherever it appears, for “13 months” substitute “12 months”;
 - (iii) wherever it appears, for “25 months” substitute “24 months”.

(3) In paragraph 3A of Schedule 4 (derogated holdings), for “In addition to the requirements under paragraph 3, the” substitute “The”.

Dan Rogerson

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

10th October 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend certain provisions of the Nitrate Pollution Prevention Regulations 2008 (S.I. 2008/2349) (“the 2008 Regulations”) which relate to the measures required in the nitrate vulnerable zones in England. They also give statutory effect to the revised designations of nitrate vulnerable zones in England made by the Secretary of State on 1st October 2013. The 2008 Regulations implement in England Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ No L375, 31.12.1991, p.1) (“the Nitrates Directive”).

Regulation 3 provides for revised designations of areas of land in England identified as nitrate vulnerable zones for the purposes of the Nitrates Directive.

Regulation 4 obliges the Environment Agency to refuse an application for a grassland derogation under regulation 13A where the applicant has been found in breach of derogation conditions set out in Schedule 4, 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.

Regulations 5 and 6 make minor amendments to the 2008 Regulations. The first is in respect of the calculation of total nitrogen spread for horticultural crops, which may be grouped together for purposes of the relevant calculations. The second concerns the equipment which may be used to spread nitrogen fertiliser. Regulation 7 makes minor corrections to Table 1 of Schedule 1 to the 2008 Regulations, and clarifies the requirements for fertiliser plans relating to both phosphate and nitrate fertilisers in Schedule 4 which must be met by farmers benefiting from a derogation pursuant to regulation 13A.

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

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