

Statutory Instrument 2002 No. 2614

The Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 2614

AGRICULTURE, ENGLAND

WATER, ENGLAND

The Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2)
Regulations 2002

Made

15th October 2002

Laid before Parliament

17th October 2002

Coming into force:

regulation 11

19th December 2002

remainder

18th October 2002

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to the prevention, reduction and elimination of pollution of water, in exercise of the powers conferred upon her by that section hereby makes the following Regulations:

Citation, commencement and territorial application

1. - (1) These Regulations may be cited as the Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002.

(2) Regulation 11 shall come into force on 19th December 2002 and all other provisions shall come into force on 18th October 2002.

(3) These Regulations apply to England only.

Interpretation

2. - (1) In these Regulations -

"the Agency" means the Environment Agency;

"Defra" means the Department for Environment, Food and Rural Affairs;

"the Defra library" means the Defra library at Nobel House, 17 Smith Square, London SW1P 3JR;

"the deposited maps" means the digital maps which -

(a) are recorded on the two CD-ROMs entitled "Additional Nitrate Vulnerable Zones (England) (September 2002)" and deposited in the Defra library; and

(b) show the additional nitrate vulnerable zones designated by regulation 3(1);

"the Nitrates Directive" means Council Directive 91/676/EEC^[3] concerning the protection of waters against pollution caused by nitrates from agricultural sources;

"nitrate vulnerable zone" means an area of land designated in accordance with article 3 of the Nitrates Directive as a vulnerable zone for the purposes of that Directive;

"the Principal Regulations" means the Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996^[4]; and

"the reviewer" means the person appointed to undertake reviews under regulation 4.

(2) Expressions used in these Regulations which are also used in the Nitrates Directive shall have the same meaning as in that Directive.

Nitrate vulnerable zones: additional designations

3. - (1) The areas of land shown as additional nitrate vulnerable zones on the deposited maps are designated as nitrate vulnerable zones.

(2) The Secretary of State shall ensure that -

(a) the deposited maps are made accessible to the public -

(i) through the Defra website; and

(ii) at the Defra library;

(b) any person who wishes to know whether his land is included in a nitrate vulnerable zone designated by paragraph (1) is provided with the relevant information (including a hard copy of the relevant extract from the deposited maps) if a request in writing is made to the Secretary of State and received by her before 19th December 2002; and

(c) such other steps are taken as the Secretary of State considers appropriate for giving adequate publicity to -

(i) nitrate vulnerable zones designated by paragraph (1); and

(ii) the rights conferred by regulations 4 and 5 and how they may be exercised.

Review procedure

4. - (1) The Secretary of State shall appoint a person to undertake reviews under this regulation.

(2) The purpose of a review under this regulation is to correct any factual error which may have been made in applying the methodology^[5] used by the Secretary of State for identifying the nitrate vulnerable zones designated by regulation 3(1).

(3) The Secretary of State shall ensure that the reviewer is provided with any explanation or information about the methodology or its use which the reviewer needs to carry out a review under this regulation.

(4) Any person whose land is included in a nitrate vulnerable zone designated by regulation 3(1) may by notice in writing object to the designation and require a review under this regulation if he believes that his land may have been wrongly included in such a zone as a result of an error of the kind mentioned in paragraph (2).

(5) The notice requiring a review must be delivered to the reviewer before 19th December 2002.

(6) The objector must provide the reviewer with such information as the reviewer reasonably requires from him to conduct the review.

(7) If the objector fails to provide information which he is required to provide under paragraph (6), the reviewer shall not be required to proceed with the review until the information is provided and in the event of a continuing failure may, after warning the objector, end the review without making a decision under paragraph (8).

(8) Subject to paragraphs (7) and (9), the reviewer shall, after considering the objection, consulting such persons and making such additional inquiries as the reviewer thinks fit -

(a) decide -

(i) whether or not the designation needs to be altered to correct any factual error

there may have been in applying the Secretary of State's methodology in relation to the relevant land; and

(ii) if so, what alterations should be made; and

(b) send his decision to the Secretary of State, the objector and the Agency.

(9) Where the reviewer proposes to make a decision which does not fully accept the objection made, the reviewer shall -

(a) send a copy of the proposed decision to the objector and to the Agency, together with -

(i) a statement of the reasons for the proposed decision, including any finding of fact; and

(ii) in the case of the objector, a full explanation of the objector's right of appeal under regulation 5;

(b) if the objector appeals in accordance with regulation 5(2) to (4), wait before making any decision on the objection until the appeal is finally determined or withdrawn;

(c) in any other case, wait before making any decision on the objection until -

(i) the objector indicates that he does not intend to appeal; or

(ii) the period for appealing runs out without an appeal being started in accordance with regulation 5(2) to (4).

Right of appeal from an adverse proposed decision on a review

5. - (1) The Secretary of State shall appoint -

(a) members of an appeals panel to determine appeals under this regulation; and

(b) a chairman of that appeals panel.

(2) An objector who is dissatisfied with a proposed decision on a review under regulation 4 may by notice in writing appeal against it.

(3) The notice of appeal must be delivered to the reviewer before the expiry of -

(a) the period of 28 days beginning on the date on which the reviewer sent a copy of the proposed decision to the appellant in accordance with regulation 4(9)(a); or

(b) if the chairman of the appeals panel has extended that period because he is satisfied that there are special reasons for doing so, the extended period.

(4) The notice of appeal must -

- (a) explain why the appellant considers that the proposed decision is wrong;
- (b) state the facts on which the appellant relies in support of his appeal; and
- (c) give the appellant's name and contact details, including an address and any phone number, fax number and e-mail address.

(5) The reviewer shall as soon as reasonably practicable forward the notice of appeal to the chairman of the appeals panel together with -

- (a) a copy of the notice requiring the review;
- (b) details of any information obtained under regulation 4(6);
- (c) a copy of the reviewer's proposed decision and -
 - (i) a statement of the reviewer's reasons; and
 - (ii) any finding of fact; and
- (d) a statement of the reviewer's observations on the appeal (a copy of which shall be sent by the reviewer to the appellant).

(6) Where -

- (a) an appeal is duly made in accordance with paragraphs (2) to (4); and
- (b) details of the appeal are forwarded in accordance with paragraph (5),

the chairman of the appeals panel shall select the individual panel member who is to determine the appeal and shall inform the appellant and the reviewer ("the parties").

(7) The relevant panel member shall ensure that the appeal is conducted fairly and he may (whether as a response to an application made to him or otherwise) give procedural directions to the parties (including directions to combine separate but related appeals so that they are dealt with together) and the parties shall comply with any directions given to them.

(8) If -

- (a) either of the parties expresses a wish to appear before and be heard by the relevant panel member; or
- (b) the relevant panel member considers that there should be a hearing,

the relevant panel member shall afford both parties an opportunity of appearing before and being heard by him.

(9) Unless the parties otherwise agree, any hearing under paragraph (8) shall be in public.

(10) The relevant panel member shall, after considering any representations duly made by the parties (whether at a hearing or otherwise) -

- (a) determine the appeal;
- (b) inform the parties in writing of his determination; and
- (c) provide them with a written statement of his reasons for the determination, including any finding of fact.

(11) The reviewer shall ensure that his decision on the review is consistent with the determination of the relevant panel member on the appeal.

Right to withdraw an appeal

6. Without prejudice to the relevant panel member's power under regulation 7, an appeal may be withdrawn by notice in writing sent to the chairman of the appeals panel at any time before it is determined.

Costs of an appeal

7. - (1) Subject to paragraph (2), the parties to an appeal shall bear their own costs.

(2) Where -

- (a) an appeal is made which is wholly without merit; or
- (b) the costs of an appeal are increased as a result of the unreasonable behaviour of any party;

the relevant panel member may order the party at fault to pay the whole or any part of any other party's costs and that sum shall be recoverable as a civil debt.

(3) The relevant panel member shall afford the parties an opportunity to make representations to him prior to exercising his power under paragraph (2).

Secretary of State bound by a decision on a review

8. Where the Secretary of State receives a decision made in accordance with regulations 4 and 5, she shall be bound by it.

Application of the Principal Regulations

9. - (1) Regulations 3(2) (periodic review), 4 (monitoring) and 6(4)(b), (5) and (6) (implementation, periodic review and monitoring of action programmes) of the Principal Regulations shall apply in relation to nitrate vulnerable zones designated by regulation 3(1) of these Regulations.

(2) The Principal Regulations shall be amended as follows -

- (a) in regulation 3 -
 - (i) in paragraph (1) (existing nitrate vulnerable zones) for "and deposited" to the end of that paragraph substitute "and deposited in the library of the Secretary of State for Environment, Food and Rural Affairs at Nobel House, 17

Smith Square, London SW1P 3JR.";

(ii) in paragraph (2) (periodic review) for "19th December 1997" substitute "19th December 2005"; and

(b) in regulation 7(1) (content of action programmes) for "the parts of the code of good agricultural practice referred to in regulation 5" substitute "paragraphs 284 to 295 of the Water Code Revised 1998 published by the Ministry of Agriculture, Fisheries and Food in 1998[6]".

Grant

10. The Farm Waste Grant (Nitrate Vulnerable Zones) (England) (No. 2) Scheme 2000[7] shall be amended by substituting for the definition of "nitrate vulnerable zone" in paragraph 2(1) (interpretation) the following definition -

" "nitrate vulnerable zone" means any area designated as a nitrate vulnerable zone by -

(a) regulation 3(1) of the Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996; or

(b) regulation 3(1) of the Nitrate Vulnerable Zones (Additional Designations) (England) (No. 2) Regulations 2002."

Action programmes

11. - (1) The Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998[8] ("the 1998 Regulations") shall apply in relation to nitrate vulnerable zones designated by regulation 3(1) of these Regulations.

(2) Paragraph 9 (application of manure) of the Schedule to the 1998 Regulations shall have effect in relation to those zones as if in sub-paragraph (2)(b)(i) "19th December 2006" were substituted for "19th December 2002".

(3) The 1998 Regulations shall be amended as follows -

(a) in regulation 8(1) (offences) -

(i) for "level 5 on the standard scale" substitute "the statutory maximum";

(ii) omit "not exceeding the statutory maximum"; and

(b) for paragraph 15 (retention of records) of the Schedule substitute -

" **15.** Any record of an event made for the purposes of paragraph 14 shall be retained for a period of 5 years after that event."

Revocation

12. The Nitrate Vulnerable Zones (Additional Designations) (England) Regulations 2002[9], including the amendments and modifications they made, are revoked.

Signed by authority of the Secretary of State

Elliot Morley

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

15th October 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Nitrate Vulnerable Zones (Additional Designations) (England) Regulations 2002, which contained an error in respect of their commencement date. Those Regulations were otherwise identical in effect to these Regulations.

These Regulations designate additional nitrate vulnerable zones and make other provision for the purpose of implementing in England Council Directive 91/676/EEC (OJ No. L375, 31.12.91, p. 1) concerning the protection of waters against pollution caused by nitrates from agricultural sources. The Regulations apply to England only. The effect of the Regulations is as follows -

regulation 3 designates the additional nitrate vulnerable zones;

regulation 4 provides a procedure for reviewing designations;

regulation 5 provides for appeals to be made from proposed decisions on a review;

regulation 6 makes provision for withdrawing an appeal;

regulation 7 deals with the costs of the parties to an appeal;

regulation 8 provides for the Secretary of State to be bound by any decision made on a review;

regulation 9 makes minor amendments to the Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996 and applies regulations 3(2) (periodic review of designations), 4 (monitoring) and 6(4)(b), (5) and (6) (implementation, periodic review and monitoring of action programmes) to the additional nitrate vulnerable zones;

regulation 10 amends the Farm Waste Grant (Nitrate Vulnerable Zones) (England) (No. 2) Scheme 2000 so that grants are available in relation to farms in the additional nitrate vulnerable zones;

regulation 11 makes minor amendments to the Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998 and applies those Regulations to the additional nitrate vulnerable zones with effect from 19th December 2002. The action programme in those Regulations defines the measures which must be taken on farms and livestock units to limit the application of nitrates to land;

regulation 12 revokes the Nitrate Vulnerable Zones (Additional Designations) (England) Regulations 2002.

The digital maps designating the additional nitrate vulnerable zones and a description of the methodology which was used to identify those zones are available through the Defra website by using the link www.defra.gov.uk/environment/water/quality/nitrate. They are also available for inspection at the Defra library at Nobel House, 17 Smith Square, London SW1P 3JR.

Copies of the Water Code Revised 1998 (referred to in regulation 9(2)(b)) may be obtained free of charge from Defra Publications, Admail 6000, London SW1A 2XX or by telephoning 08459 556000. The reference number PB0587 should be quoted when placing any order.

A regulatory impact assessment has been prepared in relation to the additional nitrate vulnerable zones. It was published on 27th June 2002 and is available through the Defra website by using the link www.defra.gov.uk/environment/water/quality/nitrate. It is also available for inspection at the Defra library at Nobel House, 17 Smith Square, London SW1P 3JR.

Notes:

[1] S.I. 1989/2393.[back](#)

[2] 1972 c. 68.[back](#)

[3] O.J. No. L375, 31.12.91, p. 1.[back](#)

[4] S.I. 1996/888 as amended by S.I. 2002/2297 (W. 226).[back](#)

[5] A description of the methodology is available through the Defra website and for inspection at the Defra library.[back](#)

[6] Copies of which are available free of charge from Defra Publications, Admail 6000, London SW1A 2XX, or by telephoning 08459 556000, quoting reference number PB0587.[back](#)

[7] S.I. 2000/2911.[back](#)

[8] S.I. 1998/1202.[back](#)

[9] S.I. 2002/2525.[back](#)

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