

EXPLANATORY MEMORANDUM TO
THE WATER (PREVENTION OF POLLUTION) (CODE OF GOOD
AGRICULTURAL PRACTICE) (ENGLAND) ORDER 2009

2009 No. 46

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument approves, for a limited statutory purpose, the Code of Good Agricultural Practice to protect water, soil and air quality issued by the Secretary of State in January 2009 (“the 2009 Code”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This instrument approves the 2009 Code under section 97(1) of the Water Resources Act 1991 (“the 1991 Act”) so far as it was issued for the purpose of (a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters (within the meaning of the 1991 Act), and (b) promoting what appears to the Secretary of State to be desirable practices by such persons for avoiding or minimising the pollution of any such waters. It revokes, in relation to England, a previous instrument which approved, under the 1991 Act, the Code of Good Agricultural Practice for the Protection of Water of October 1998.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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 In January 2009 the Secretary of State issued the Code of Good Agricultural Practice to protect water, soil and air quality, which revoked in relation to England the separate Water, Air and Soil Codes published by what were then the Ministry of Agriculture, Fisheries and Food and the Welsh Office Agricultural Department in

October 1998. One of those Codes, the Code of Good Agricultural Practice for the Protection of Water, had been approved under section 97(1) of the 1991 Act by the Water (Prevention of Pollution) (Code of Practice) Order 1998 (S.I. 1998/3084).

7.2 This instrument revokes and replaces S.I. 1998/3084 in relation to England, and approves the 2009 Code under section 97(1) of 1991 Act, in so far as the Code was issued, essentially, for the purpose of giving guidance with respect to activities that may affect controlled waters and for promoting desirable practices for avoiding or minimising the pollution of controlled waters. As a result of this approval, the Environment Agency is required by section 97(2) to take into account whether there has been or is likely to be any contravention of the 2009 Code in determining when and how to exercise certain powers under the 1991 Act (imposing prohibitions under section 86 and exercising powers conferred by regulations under section 92).

8. Consultation outcome

8.1 A consultation on a draft document *A Code of Good Agricultural Practice to protect water, soil and air quality* was launched in August 2007 and closed in November 2007. The consultation sought views on how the Codes of Good Agricultural Practice for water, for soil and for air should be updated.

8.2 Defra invited views on three issues (i) Whether or not the three codes should be consolidated into one overarching code; (ii) Whether or not the code should provide integrated advice by farming activity rather than by natural resource; and (iii) The general content, style and structure of a draft new code.

8.3 A summary of responses to the consultation can be found at www.defra.gov.uk/farm/environment/cogap/pdf/summary-responses.pdf. Having considered the responses carefully, Defra decided to publish a single Code of Good Agricultural Practice that provides integrated advice based on farming activity.

9. Guidance

9.1 None.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

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

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 None planned.

13. Contact

Robert Wells at the Department for Environment, Food and Rural Affairs Tel: 020 7238 3136 or email: Robert.Wells@defra.gsi.gov.uk can answer any queries regarding the instrument. Copies of the 2009 Code may be obtained from Her Majesty's Stationery Office and the Department for Environment, Food and Rural Affairs' website at www.defra.gov.uk.