

EXPLANATORY MEMORANDUM TO
THE REDUCTION AND PREVENTION OF AGRICULTURAL DIFFUSE
POLLUTION (ENGLAND) REGULATIONS 2018

2018 No. 151

1. Introduction

- 1.1 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 sets out provisions to reduce and prevent pollution of inland freshwaters and coastal waters (surface waters) and springs, wells and boreholes (groundwater) from farming activities on agricultural land in England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument complements existing regulatory regimes such as the Nitrates Pollution Prevention Regulations 2015 (S.I. 2015/668) and the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (S.I. 2010/639). It also forms part of the implementation of Article 11(3)(h) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p 1) (the Water Framework Directive), which requires member States to implement basic measures to prevent or control pollution from diffuse sources.
- 4.2 A Transposition Note has not been prepared for this instrument as it does not substantively change the transposition of the Directive.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 [“A Green Future: Our 25 Year Plan to improve the Environment”](#) sets out HM Government’s comprehensive and long-term approach to protecting and enhancing our environment, natural landscapes and habitats in England for the next generation. When the United Kingdom leaves the European Union, control of important areas of environmental policy will return to the UK. HM Government intends to use this opportunity to strengthen and enhance the protections our countryside, rivers, coastline and wildlife habitats enjoy, and develop new methods of agricultural and fisheries support which put the environment first. This instrument is one of the measures set out in the plan. It will encourage better land management, reduce pollution and soil erosion, and improve resource efficiency.
- 7.2 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until we leave the EU, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.3 The objective of the Water Framework Directive is to establish a framework to protect inland surface waters, transitional waters, coastal waters and groundwater. Article 11 requires member States to develop a programme of measures to meet the environmental objectives set out in Article 4 of the Directive. This includes basic measures to prevent or control diffuse sources of pollution (Article 11(3)(h)). This instrument forms part of these basic measures.
- 7.4 Agriculture and rural land management is currently the greatest source of water pollution in England. The pollutants of most concern include the nutrients nitrogen and phosphorus, sediment, pesticides and faecal organisms (from animal excreta). Farming accounts for 25% phosphate, 50% nitrate and 75% sediment loadings in the water environment, which harms ecosystems. The estimated damage from this pollution ranges from £750m to £1.3bn each year and has repercussions for many sectors in society including water users, water companies, tourism and shellfisheries. This instrument is intended to reduce and prevent pollution from these nutrients and establish a level playing field across England. It is also intended to secure cost savings for the farming industry (e.g. delivering net cost savings for farmers of an estimated £24.9 million annually from improved resource efficiency of fertilisers and manures).
- 7.5 This instrument contains rules that apply to those people with custody or control of agricultural land in England (“land managers”). It covers two main activities in order to reduce and prevent diffuse water pollution from agricultural sources: the application and storage of fertilisers; and the management of soil and livestock.
- 7.6 The aim of the rules on the application and storage of fertilisers is to maximise the uptake of nutrients by crops and improve soil structure to minimise the loss of nutrients and sediment to water. Land managers are prohibited from applying or storing organic manure or manufactured fertiliser in certain areas so as to protect nearby surface waters (inland freshwaters and coastal waters) and groundwater (springs, wells and boreholes). They are required to plan each application of organic manure and manufactured fertiliser to agricultural land, including by considering whether, in their individual circumstances, there are factors which might lead to a

significant risk of agricultural diffuse pollution which they could prevent. This instrument lists examples of those factors they must take into account.

- 7.7 For cultivated agricultural land only, land managers are required to take into account the results of soil testing when planning applications of manure or fertiliser. These results must be no more than five years old at the time of the application, but can date from before this instrument came into force. They must cover the pH, and levels of phosphorous, nitrogen, magnesium and potassium present in soil on cultivated land. Nitrogen levels can also be derived through an assessment method of the soil nitrogen supply.
- 7.8 The aim of the rules on the management of soil and livestock is to reduce and prevent soil erosion and runoff from land to nearby waters. Land managers are prohibited from allowing poaching (i.e. the trampling and treading of land by livestock) or locating livestock feeders in certain areas. They must also consider whether, in their individual circumstances, there are factors which might lead to a significant risk of agricultural diffuse pollution which they could prevent.
- 7.9 The rules about both the application of organic manure and manufactured fertiliser and the management of soil and livestock also contain requirements on land managers to take reasonable precautions. These are actions a land manager is expected to take where it is practical and reasonable to do so in the circumstances. To illustrate what might be appropriate, this instrument provides examples. This is part of the approach to encourage land managers to assess any risk of agricultural diffuse pollution and to take preventive steps.
- 7.10 This instrument will be enforced by the Environment Agency, in line with its Enforcement and Sanctions policy. This provides that enforcement will be conducted in an effective, proportionate and dissuasive manner, with the emphasis on working with land managers to achieve compliance, explaining the rules and how best to meet them. The Environment Agency is able to use civil sanctions (compliance notices; restoration notices; stop notices; fixed monetary penalties; variable monetary penalties and the acceptance of enforcement undertakings) to address a breach. It is also able to pursue a criminal prosecution (most likely in the more serious or persistent cases). A criminal offence can lead, on conviction, to a fine.

Consolidation

- 7.11 Not applicable; this instrument does not make amendments to any other legislation.

8. Consultation outcome

- 8.1 A public consultation was held between 29 September and 24 November 2015 and 183 responses were received. There was a positive response with 76% of respondents supporting at least half of the proposed rules being introduced through legislation. The main issue of concern was that some of the proposed rules might be costly for smaller farm businesses. Also, further clarity was sought on the precise requirements of specific rules and, whilst an advice-led approach was supported, it was considered that enforcement should be robust and effective.
- 8.2 As a result, this instrument contains rules designed to reduce costs to land managers by promoting increased productivity through better resource efficiency. It also contains provisions allowing the Environment Agency to use civil sanctions or pursue a criminal prosecution in the case of land managers who fail to comply.

8.3 A summary of the consultation responses, a policy paper “Farming rules for water – getting full value from fertilisers and soils” and a policy factsheet have been published on [GOV.UK](https://www.gov.uk).

9. Guidance

9.1 Defra will publish guidance about the regulations on GOV.UK.

9.2 The Environment Agency, as the body responsible for enforcing this instrument, will do so in accordance with its published [enforcement and sanctions guidance](#). This instrument also allows the Secretary of State to provide guidance to the Environment Agency on how it should exercise its functions. Any such guidance will be published.

10. Impact

10.1 The overall impact of this instrument on business, charities or voluntary bodies is estimated to be £440 million net present value benefit over the 10 year accounting period. The capital cost to farm businesses would be £54 million, primarily where additional slurry storage is required. However, the total cost saving to farm businesses through improved resource efficiency would be £324 million.

10.2 The impact on the public sector is that the total cost to government of communicating, monitoring and enforcing this instrument is estimated to be £1.2 million over the 10 year accounting period.

10.3 An Impact Assessment, including a Justice Impact Test, is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 This instrument applies to activities undertaken by small businesses and its impact has been assessed in the Impact Assessment. More than 99% of businesses in agriculture, fishing and forestry in England employ fewer than 50 people. Therefore it would not be appropriate to exempt small businesses from the requirements of this instrument. The regulations will be implemented in a proportionate way through advice and guidance by the Environment Agency. Civil sanctions within the enforcement measures provides a cost effective and proportionate way of regulating farmers.

11.2 For these reasons no mitigating actions are proposed.

12. Monitoring & review

12.1 This instrument contains a statutory review clause, meaning that it must be reviewed within three years of the date the instrument comes into force to establish how well it delivers against its expected outcomes and the impact on the farming industry. The review is expected to inform development of the regulatory framework for water and pollution after we have left the European Union.

12.2 Any improvements in water quality will be monitored through the existing Environment Agency water quality monitoring programme and may also draw on other water data, such as that collected by water companies and reported to the Drinking Water Inspectorate.

12.3 Compliance with the rules and any enforcement activity will be monitored and the savings from improved resource efficiency will be compared with the estimates in the Impact Assessment.

13. Contact

13.1 Matthew Hampshire at the Department for Environment, Food and Rural Affairs (Tel: 020 8026 3674 or email matthew.hampshire@defra.gsi.gov.uk), or Jan Kiernan at the Department for Environment, Food and Rural Affairs (Tel: 020 8026 3316 or email jan.kiernan@defra.gsi.gov.uk) can answer any queries regarding the instrument.