STATUTORY INSTRUMENTS

# 2008 No. 2349

# The Nitrate Pollution Prevention Regulations 2008

## PART 2

### Designation of nitrate vulnerable zones

**Designation of nitrate vulnerable zones**

**7.**—(1) The areas marked as nitrate vulnerable zones on the maps marked "Nitrate Vulnerable Zones (England 2008)"(**1**) and deposited at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR are designated as nitrate vulnerable zones for the purposes of these Regulations.

(2) These are areas of land that drain into polluted waters and that contribute to the pollution of those waters.

**Application for a declaration**

**8.**—(1) The owner or occupier of any holding within a nitrate vulnerable zone may apply to an independent panel appointed by the Secretary of State for the purpose of these Regulations for a finding that the holding or part of it—

(a) does not drain into water identified by the Secretary of State as being polluted, or

(b) drains into water that the Secretary of State should not have identified as being polluted,

and accordingly the land should not be designated as a nitrate vulnerable zone.

(2) An application must be based on either—

(a) data provided by the applicant, or

(b) evidence provided by the applicant that the data used by the Secretary of State were incorrect.

(3) The Secretary of State must publish the manner and form in which the application must be made.

(4) An application must be made in writing on or before 31st January 2009, must be made in the manner and form published by the Secretary of State and must include all the documentation that the applicant relies on.

**Proceedings before the panel**

**9.**—(1) The panel must consist of an odd number of persons, and make its decision either unanimously or by a simple majority.

(2) The panel must consider the application and make a finding whether or not the applicant has demonstrated, on the balance of probabilities, that the holding or part of it—

(**1**) These maps, for illustrative purposes only, can be accessed on http.adasis://nvz.adasis.co.uk/maps/index/html, but the version deposited at the offices of the Secretary of State is the definitive version.

(a) does not drain into water identified by the Secretary of State as being polluted; or

(b) drains into water that the Secretary of State should not have identified as being polluted;

(3) The panel must arrive at its decision based on documentation submitted to it unless it decides that it needs additional information to form a judgment, in which case it may request an applicant, or the Secretary of State, to provide additional material, and in exceptional circumstances may convene an oral hearing.

(4) At an oral hearing the applicant and the Secretary of State have the right to appear, and the panel may permit any other person to appear.

(5) All parties must bear their own costs.

### Effect of panel findings

**10.**—(1) If the panel decides in favour of the applicant, the holding to which the application applies is no longer treated for the purposes of these Regulations as being in a nitrate vulnerable zone.

(2) If the panel finds that any body of water should not have been identified as being polluted, any holding draining into that body of water is no longer treated for the purposes of these Regulations as being in a nitrate vulnerable zone and the Secretary of State must immediately notify the occupier of such a holding.

(3) The Secretary of State must publish all findings by the panel on the Secretary of State's website.

### Review of nitrate vulnerable zones

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

(2) Before 1st January 2013, and at least every four years subsequently, the Secretary of State must 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 on the quality of water intended for human consumption(**2**),

except for those sampling stations where the nitrate concentration in all previous samples taken for this purpose has been below 25 mg/l and no new factor likely to increase the nitrate content has appeared, in which case the monitoring programme need be repeated only every eight years.

(3) Nitrate concentration must be measured in accordance with the reference methods of measurement referred to in Article 4a(3) of Council Decision 77/795/EEC establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community(**3**).

(4) At the end of each four-year or eight-year period at the latest the Secretary of State must—

(a) identify water that is or could be affected by pollution if the controls in these Regulations are not applied in that area, using the criteria in Annex I to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources(**4**);

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

(**2**) OJ No. L330, 5.12.1998, p. 32.
(**3**) OJ No. L334, 24. 12. 1977, p. 29 as last amended by the 2003 Act of Accession.
(**4**) OJ No. L375, 31.12. 1991, p. 1 as amended by Regulation (EC) 1882/2003 (OJ No. L284, 31.10.2003, p. 1).

(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.