

2016 No. 1190

AGRICULTURE, ENGLAND

WATER, ENGLAND

**The Nitrate Pollution Prevention (Amendment) Regulations
2016**

<i>Made</i> - - - -	<i>6th December 2016</i>
<i>Laid before Parliament</i>	<i>8th December 2016</i>
<i>Coming into force</i> - -	<i>31st December 2016</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(**a**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(**b**).

In accordance with Article 5(3) of Council Directive 91/676/EEC (concerning the protection of waters against pollution caused by nitrates from agricultural sources)(**c**), the Secretary of State has taken into account available scientific and technical data, mainly with reference to the respective nitrogen contributions originating from agricultural and other sources, and the environmental conditions of the nitrate vulnerable zones in England.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Nitrate Pollution Prevention (Amendment) Regulations 2016 and come into force on 31st December 2016.

(2) These Regulations apply to England only.

Amendments to the Nitrate Pollution Prevention Regulations 2015

2. The Nitrate Pollution Prevention Regulations 2015(**d**) are amended in accordance with regulations 3 to 9.

Amendment of regulation 3 (designation)

3. For regulation 3(2), substitute—

(**a**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
(**b**) S.I. 2008/301.
(**c**) OJ No L 375, 31.12.1991, p1, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p1).
(**d**) S.I. 2015/668.

“(2) The relevant maps are the maps marked “Nitrate Vulnerable Zones (England) 2017 to 2020” and published on 1st December 2016 on the Agency’s website(a).”.

Amendment of regulation 5 (recommendations and proposals)

4. In regulation 5—

- (a) in paragraph (3), after “must” insert “, (except where paragraph (3A) applies)”;
- (b) after paragraph (3), insert—

“(3A) Where the Secretary of State revises or adds to the designation of nitrate vulnerable zones before 1st January 2017, the Secretary of State must—

 - (a) by 31st December 2016, publish the proposals to revise or add to the designation on the Agency’s website;
 - (b) by 1st March 2017, send written notice to any person appearing to the Secretary of State to be the owner or occupier of a relevant holding.”;
- (c) in paragraph (4), after “paragraph (3)(b)” insert “or (3A)(b)”;
- (d) for paragraph (4)(a), substitute—

“(a) a reference to the page on the Agency’s or Secretary of State’s website on which can be found the Secretary of State’s proposals or, in the case of a notice under paragraph (3A)(b) where the designation has already been revised or added to, the designation.”;
- (e) in paragraph (5)(b), at the end insert “, or which the Secretary of State has so designated”.

Insertion of regulation 5A and Schedule 4 (transitional provisions)

5.—(1) After regulation 5, insert—

“Transitional periods for new holdings

5A. The requirements of the regulations listed in Schedule 4 do not apply in relation to a new holding until the dates set out in that Schedule.”.

(2) After Schedule 3, insert new Schedule 4 contained in the Schedule to these Regulations.

Insertion of regulations 25A and 25B (records)

6. Before regulation 26, insert—

“Record of size of holding

25A. The occupier of a new holding must record the total size of the holding, calculated in accordance with regulation 7(4).

Record of storage capacity

25B. The occupier of a new holding with livestock must calculate and record—

- (a) the amount of manure that will be produced by the number of animals expected to be kept in a building or on hardstanding during the storage period (as defined by regulation 25), using the figures in Schedule 1;
- (b) the amount of storage capacity (in slurry vessels and hardstanding) required to enable compliance with regulation 25, taking into account—

(a) <https://www.gov.uk/guidance/nutrient-management-nitrate-vulnerable-zones>. The information can also be obtained by writing to the Environment Agency, National Customer Contact Centre, PO Box 544, Rotherham, S60 1BY.

- (i) the amount of manure intended to be exported from the holding,
 - (ii) the amount of manure intended to be spread on land that has a low run-off risk, and
 - (iii) in the case of a slurry vessel, the amount of liquids other than slurry likely to enter the vessel; and
- (c) the current storage capacity of the holding.”.

Amendment of regulation 34 (keeping records up to date)

7. In regulation 34—

- (a) for paragraph (1), substitute—

“(1) Where the size of a holding changes, the occupier of the holding must update the record required by regulation 35(1) of the old Regulations, or by regulation 25A of these Regulations, within one month.”;

- (b) for paragraph (3), substitute—

“(3) Where the amount of storage capacity of a holding changes, the occupier of the holding must update the record required by regulation 36(1)(b) of the old Regulations, or by regulation 25B of these Regulations, within one week.”.

Amendment of regulation 36 (application for derogation)

8. In regulation 36—

- (a) for paragraph (4) substitute—

“(4) A derogation granted under this regulation ceases to have effect unless the occupier to whom the derogation is granted has sent to the Agency a written declaration that the conditions set out in Schedule 3 (“the derogation conditions”) will be met in relation to the holding.

(4A) The written declaration must be sent to the Agency within 28 calendar days of the derogation being granted.”;

- (b) after paragraph (5) insert—

“(5A) But an application relating to the calendar year commencing on 1st January 2017 may be submitted by 20th March 2017.”.

Miscellaneous amendments

9.—(1) In regulation 2(1) (interpretation)—

- (a) in the definition of “new holding”, for “after 16th May 2013” substitute “on 31st December 2016 (and which was not a holding immediately before that date)”;

- (b) in the definition of “shallow soil”, for “40mm” substitute “40cm”.

- (2) In regulation 20 (closed periods for organic manure), omit paragraph (6).

- (3) In regulation 21 (exemption for organic holdings), omit paragraph (6).

- (4) For regulation 24 (separation of slurry), substitute—

“**24.** The occupier of a relevant holding must, when separating any slurry on the holding into its solid and liquid fractions, do so mechanically or on an impermeable surface where the liquid drains into a suitable receptacle.”.

- (5) In regulation 40(5) (publication date for regulatory review), for “6th August 2017” substitute “31st March 2020”.

- (6) For regulation 41(1) (offence) substitute—

“(1) A person who fails to comply with the requirements of any of the following regulations commits an offence—

- (a) regulations 7 and 8;
- (b) regulations 10 to 13;
- (c) regulations 15 to 35;
- (d) regulation 37(3).”.

6th December 2016

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

SCHEDULE Regulation 5(2)
New Schedule 4

“SCHEDULE 4 Regulation 5A
Transitional dates for new holdings

1. The following regulations do not apply in relation to a new holding until 1st January 2018—

- (a) regulation 7 (application of livestock manure);
- (b) regulation 8 (spreading organic manure);
- (c) regulation 10 (planning the spreading of nitrogen fertiliser);
- (d) regulation 11 (additional information to be recorded);
- (e) regulation 12 (total nitrogen spread on a holding);
- (f) regulation 13 (grass grown for dehydration or chlorophyll production);
- (g) regulation 15 (risk map);
- (h) regulation 16 (restrictions on spreading nitrogen fertiliser);
- (i) regulation 17 (spreading organic manure near surface water, boreholes, springs or wells);
- (j) regulation 19 (incorporating organic manure into the ground);
- (k) regulation 23 (storage of organic manure);
- (l) regulation 25A (record of size of holding);
- (m) regulation 25B (record of storage capacity);
- (n) regulation 26 (annual records relating to storage);
- (o) regulation 27 (record of nitrogen produced by animals);
- (p) regulation 28 (livestock manure brought on to or sent off the holding);
- (q) regulation 29 (sampling and analysis);
- (r) regulation 30 (records of crops sown);
- (s) regulation 31 (records of spreading nitrogen fertiliser);
- (t) regulation 32 (subsequent records);
- (u) regulation 34 (keeping records up to date).

2. The following regulations do not apply in relation to a new holding until 31st July 2019—

- (a) regulation 18 (restrictions on spreading slurry);
- (b) regulation 20 (closed periods for organic manure);
- (c) regulation 21 (exemption for organic holdings);
- (d) regulation 22 (closed period for manufactured nitrogen fertiliser);
- (e) regulation 24 (separation of slurry);
- (f) regulation 25 (storage capacity).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668) (“the 2015 Regulations”) which apply to England.

Regulation 3 ensures the 2015 Regulations refer to a new map of the revised Nitrate Vulnerable Zone (“NVZ”) designations for the period 2017 to 2020 to which the rules contained in the 2015 Regulations apply. Regulation 4 makes some changes to the procedure for publicising and notifying the revised NVZ designations for this period. Regulation 5 and the Schedule insert transitional arrangements for those newly in a designated NVZ so that the rules will not apply immediately.

Regulation 6 inserts requirements about record-keeping for those newly in NVZs. These requirements already applied to those previously in NVZs under the regulations in force before the 2015 Regulations. Regulation 7 makes consequential changes to regulation 34.

Regulation 8 amends arrangements for applying for a derogation under regulation 36, in particular to extend the period during which an application for 2017 can be made.

Regulation 9 makes further amendments, including to amend some definitions, remove spent transitional provisions, change the date by which the 2015 Regulations must be reviewed, and clarify regulation 24 and the offence provision.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sectors is foreseen.

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