

Nitrates Directive

Q&A on nitrates regulations effective 17 May 2013

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New Legislation

Q1: What is the new legislation?

New legislation came into force on the 17 May 2013. It establishes new Nitrate Vulnerable Zone (NVZ) boundaries and rules on farming practice that apply within NVZs for the next 4 years (2013 to 2016). The legislation implements the package of changes set out in the government response to its consultation, published in August last year. The changes are relatively small in scale, and reflect both new scientific evidence and the views expressed in the consultation.

Q2: What are the implementation dates?

Where Defra has introduced positive changes for farmers, implementation dates will be when the new nitrates regulations come into force on 17 May 2013 to ensure they have the benefits as soon as possible.

Most of the rules need to be complied with from 1 January 2014, though a few have a longer transition period.

Farmers whose land is designated for the first time in 2013 have longer to adapt to the most challenging rules (eg closed periods and slurry storage).

Designations

Q3: What are the changes to the NVZ areas?

For the first time since adoption of the Directive, Defra is reducing the Nitrate Vulnerable Zone (NVZ) coverage in England, from 62% of England to 58%. This is good news, and reflects water quality improvements in recent years. Approximately 10,000 farmers will come out of NVZs and 2,500 farmers will be in NVZs for the first time.

Q4: Where can I see the designated NVZs?

The map of the NVZs designated by the new nitrates regulations is on the Environment Agency's (EA) 'What's in Your Back Yard' NVZ page.

From the EA's homepage www.environment-agency.gov.uk:

- click on the 'What's in Your Backyard' link (near top left of the screen),
- click on the 'Go straight to the maps' link (top of the listing),
- click on the 'Nitrate Vulnerable Zones' icon/text link.

Enter your postcode in the text box (top left) to go to your general area in the NVZ map.

The NVZ boundaries shown in these maps take into account all appeal decisions made up to and including 12 February 2013.

Q5: Appeals – what is the current position?

There were 455 appeals in total. Almost all of these have now been decided. However, Defra could not delay bringing the new nitrates regulations into force until all appeals were decided. This approach gives farmers as much notice as possible of the new boundaries that apply from 2013 to 2016 and the action programme that applies within NVZs. The new regulations also introduce the provision for the grassland derogation at the earliest opportunity.

Defra plans to amend the NVZ boundaries in July 2013 following receipt of the final appeal decisions. A handful remains to be notified to us.

Guidance

Q6: What guidance is there for farmers newly in NVZs?

Defra has worked with farmers to improve and update our existing detailed guidance. This will be available from the end of May 2013.

For farmers who find themselves in an NVZ for the first time transitional implementation dates will provide adequate time for them to plan for the new requirements.

Action Programme

Q7: What help is Defra providing to industry?

Defra is introducing several changes that will provide extra flexibility for some farmers, on:

- Renewing the grassland derogation for a further 4 years (estimated at an average saving of £10,000 per year for each farm granted a derogation).
- Exempting low-intensity farms from some record-keeping rules.
- Clarifying the regulations for crops in greenhouses.
- Increasing nitrogen allowances for chlorophyll production.
- Allowing better use of compost in top fruit cultivation.
- Encouraging precision slurry application techniques to improve slurry fertilisation efficiencies.

Q8: Do other Member States have Action Programmes as stringent as England's?

The Action Programmes of other Member States all reflect the basic requirements of the Nitrates Directive and therefore there is a level of consistency between them. However, the Directive allows Member States to take account of the prevailing environmental

conditions in their countries when defining their rules. Some have far stricter controls than those applicable in England.

Q9: How does this link with other European legislation?

The NVZ Action Programme is a basic measure under the European Union Water Framework Directive. As such, it is an important part of the work being done to address water pollution. Other directives, such as the Urban Waste Water Treatment Directive provide complementary measures and help drive general improvements to water quality.

Q10: What are the costs of these changes?

The costs to farmers are generally very small, and the benefits for some are significant (apple growers may expect up to a 45% increase in crop because of the changes Defra is introducing for the use of compost). Overall, the balance of regulation is about neutral for the farming industry. The proposals will benefit the environment, particularly when the effect of the changes on non-nitrate pollutants such as phosphate and sediment are considered.

Q11: How will Defra enforce the regulations?

The regulations will be enforced by the Environment Agency. Its officers make risk-based assessments of which farms to inspect.

In addition, the Rural Payments Agency will inspect a proportion of farmers who claim single farm payment under the cross-compliance rules.

Q12: What about enforcing the slurry storage rules?

Both the Environment Agency and the Rural Payments Agency will enforce the slurry storage rules when they find breaches. As well as being a legal requirement, making good use of sufficient slurry storage is an essential element in both reducing diffuse pollution of water and ensuring farm businesses are resilient in the future.

Defra recognises that a slurry store is a costly investment, but strongly encourages all farmers with slurry to ensure they have a sound store if they need one. It is important that the law-abiding farmers who make this investment are not put at a competitive disadvantage by others who do not comply with the rules on storage. This is a message Defra regularly gets from the industry itself.

Q13: Why were there late changes to the Action Programme?

The new upper limits on nitrogen fertiliser applied to horticultural crops are in line with current industry good practice.

Defra had previously stated that it would provide additional guidance to farmers on constructing farm yard manure heaps. This is now included in the regulations.

While Defra would have preferred to be able to consult the industry in advance of making these changes, this was not possible. Defra is working actively with industry now to ensure that these rules are acceptable.

Q14: What industry engagement is there?

There is an ongoing project with the farming industry that is reviewing the 'SSAFO' Regulations. These were implemented over twenty years ago to serve a very different livestock industry than exists today: now is a good time to see if they are still justified and fit for purpose. The same project is also considering the feasibility of introducing flexibility for closed period start and end dates.

Derogation

Q15: What is the current position with the derogation?

Defra understands that it has secured the renewal of the derogation under broadly the same terms as the previous Commission Decision, and the new Commission Decision is awaited. These regulations anticipate this, providing for derogations to continue to be granted.

Q16: Is renewing the grassland derogation good for the environment?

The higher level of manure application allowed under the grassland derogation is justified by the higher uptake of nitrogen by actively growing grass. The derogation does not allow farmers to spread any more nitrogen in total on the land – its effect is simply to allow a greater proportion of the nitrogen to come from manures.

N max

Q17: What changes is Defra making to the maximum amount of nitrogen fertiliser (N max) I can put on a crop?

Up to now, the Action Programme only required livestock manures and manufactured nitrogen fertilisers to count towards the N max limit calculation. Under the new regulations crop-available nitrogen from sewage sludge (biosolids), compost or other organic manures not originating from farm livestock are also to count towards the N max calculation, (coming into effect 1 January 2014).

The new regulations also introduce limits on the amount of nitrogen that can be spread to most horticultural crops.

Q18: Why has Defra included the contribution of all organic manures to N max?

Including all organic manures in the N max calculation will help reduce the risk of applying more nitrogen than crops require, and with it the likelihood of nitrate pollution.

Q19: Why has Defra also made changes to N max for some grass growers?

Defra received requests to increase N max when grass is grown for the production of chlorophyll or high protein content. Defra reviewed the scientific evidence and concluded that with the very specific systems of production used, higher rates of nitrate application could be justified by crop need.

Manure N efficiency

Q20: What changes is Defra making to livestock manure N efficiency values?

The current Action Programme requires farmers to take into account the crop available N supply from livestock manure applications, using standard values. From 1 January 2014 the N efficiency value for cattle slurry will be 40% (an increase of 5%) and for pig slurry it will be 50% (also an increase of 5%).

Q21: What impact does Defra expect them to have on the farmers?

Defra has based the changes on the evidence showing that good farming practice is already able to deliver these levels of efficiency. Extracting the greatest nutrient value possible out of manures is an important mechanism in sustainably increasing agricultural productivity in England. This rule change will provide further encouragement to farmers to use the most efficient slurry spreading equipment at the best time. Where farmers do increase efficiency, they could expect to spend less on manufactured fertiliser.

Compost

Q22: What are the new rules about using composts?

The 250 kg N/ha/ per 12 months limit for organic manure remains. However, the rules will allow farmers to apply up to 1,000 kg N/ha as compost mulch every four years to top fruit orchards (apples, pears, plums). This N load would also contribute to the calculation of contributions to crop demand (N max), so would replace the use of other organic fertilisers, rather than be an addition to them.

The rules will also allow farmers to apply 500 kg N/ha as compost every two years, which can be worked into the soil for other crops. This N would also contribute to the calculation of contributions to crop demand (N max).

Q23: Why has Defra changed the use of compost?

The Task Force on Farming Regulation heard concerns, supported by good evidence from top fruit growers that application of the organic manure N field limit is inappropriate for composts that have a very low readily available N content, and therefore a low risk of leaching. The evidence indicated use of compost delivered significantly increased yields whilst carrying very little environmental risk.

Closed periods

Q24: What changes is Defra making to closed periods?

For medium and heavy soils, Defra is extending the closed period (when organic manures with a high readily available N content must not be spread) by two weeks, to 31 January.

For farms in NVZs designated before 2013, farmers must comply with this rule for the closed period starting this autumn.

For farms in NVZs designated for the first time in 2013, farmers must comply with this rule for the closed period starting in autumn 2015.

Q25: Why has Defra extended the closed periods?

Defra would have preferred not to extend closed periods. However, new evidence shows that nitrate leaching continues beyond the end of the existing closed period on medium and heavy soils in normal conditions. Prohibiting the spreading of fertilisers on these soils until the end of January will reduce nitrate losses overall.

Q26: What impact does Defra expect the change to have on farmers?

The extension will restrict when farmers can spread their fertilisers. Farmers will not be obliged to build additional slurry storage, though they should consider this when reviewing their infrastructure. Defra estimates that the direct costs to farmers will be small. Lengthening the closed period will leave grassland farms with 6 weeks of spare slurry storage capacity in an average year, and will not require the construction of additional storage for those already complying with the NVZ rules.

Q27: What else is Defra doing?

The Task Force recognised the need for closed periods, but recommended taking a more flexible approach to start and end dates to reflect year-to-year variability in the weather. As part of a wider project relating to slurry storage and management, in collaboration with industry Defra is undertaking a feasibility study on introducing greater flexibility in determining closed periods.

Slurry spreading after closed periods

Q28: What change is Defra making to the amount of slurry that can be spread after closed periods?

The current rules limit slurry spreading to 50m³ per hectare at a time, with no repeat spreading within 3 weeks, between the end of the closed period and the beginning of March. Defra is reducing this quantity to 30m³.

Q29: Defra said the reduction to slurry volume applications would prevent an extension of the closed period, but Defra is doing both. Why?

Defra suggested reducing the amount that spread was an alternative to extending closed periods. Further consideration of the evidence, and of consultation feedback, led us to conclude that it was absolutely necessary to extend closed periods, but that by reducing the spreading rate immediately after the closed period to 30m³ the extension of closed periods could be limited to 2 weeks.

Q30: What impact does Defra expect the change to have?

Evidence suggests that the existing limit was significantly greater than current practice, and that in fact a more typical spreading rate is around 25 m³ to 30m³. Defra therefore believes that in most cases this reduction will not have a negative impact on farming. Where this causes farmers to reduce their rate of spreading, this will act as an incentive to use precision spreading equipment to make the most of the nutrient content of the slurry. It will help contribute to reducing nitrate losses from farmland.

Spreading near watercourses and precision spreading

Q31: What is the new rule about spreading slurry near watercourses?

At present slurry must not be spread within 10 metres of watercourses. Defra is reducing this distance to 6 metres when precision slurry spreaders are used.

Q32: Why allow closer application of slurry near watercourses – doesn't that increase the risk?

Defra considers that because these kinds of spreading equipment place the slurry precisely on or into the ground a greater margin for error is not necessary as with, for example, broadcast spreaders.

Farmers will still have to consider whether, taking into account the local conditions, there is a significant chance of nitrogen getting into surface water having regard to the Code of

Good Agricultural Practice. If there is, they should not spread. In line with the principles put forward by the Task Force on Farming Regulation, Defra must trust farmers to make these decisions honestly and competently according to local conditions.

Q33: What impact does Defra expect the change to have?

This proposal provides additional options for farmers and will still contain rules to minimise the risk of pollution from slurry spreading near watercourses. However, as part of the wider encouragement of precision spreading this will assist in reducing harmful ammonia and odour pollution to air and prevent spray drift. Because more of the nitrogen in slurry is available to the crop when precision techniques are used, this measure provides a push in the direction of reducing total nitrogen applications to land. Accurate spreading makes good business sense.

New slurry store notifications

Q34: What did Defra decide about notifying the EA of new slurry stores?

Defra has implemented the proposal to require farmers to notify the Environment Agency before starting to build a new slurry store under the 'SSAFO' Regulations (the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010). The EA will then be able to determine whether an inspection or any modifications might be required. Early engagement with the Environment Agency can help prevent expensive mistakes and therefore seeking its input early is recommended.

Record keeping

Q35: What changes is Defra making to record keeping?

Defra has looked very hard for ways to reduce red tape, and has been able to exempt low intensity farms from some record-keeping requirements.

This is an example of an evidence-based and risk-based policy change, as recommended by the Farming Regulation Task Force.

Q36: How does this tie in with reducing red tape?

The changes are based on sound science and reflect views expressed in response to the consultation and the recommendations made by the Farming Regulation Task Force. Better-targeted rules are easier for farmers to implement, so they are also better for the environment.

Q37: How will the exemption for low intensity farms work?

Defra has defined “low intensity” as applying to farms with:

- Greater than 80% grassland, and
- Overall livestock manure N loading is less than 100 kg/ha, and
- Manufactured N applications of less than 90 kg/ha, and
- No importation of organic manure onto the holding.

Each of these conditions must be met for holdings to be considered “low intensity”.

Where farms meet these criteria, farmers will not need to keep detailed records of the amount of fertiliser they have spread on each individual field. They will need to have a record of their calculation showing that they are a low intensity farmer.

Q38: Isn't Defra allowing low intensity farms to spread too much manufactured fertiliser?

What is important is the total quantity of nitrogen applied. The criteria for meeting the definition of “low intensity” will ensure that total fertiliser applications will be well below (less than two thirds of) what is normally permitted.

Defra, Water Quality, Nitrates Directive Team

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