

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION DOCUMENTS

8693/18

8693/18 ADD 1-9

COM(2018) 257 final

SWD(2018) 246 final - Parts 1-9

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 91/676/EEC CONCERNING THE PROTECTION OF WATERS AGAINST POLLUTION CAUSED BY NITRATES FROM AGRICULTURAL SOURCES BASED ON MEMBER STATE REPORTS FOR THE PERIOD 2012–2015

COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 91/676/EEC CONCERNING THE PROTECTION OF WATERS AGAINST POLLUTION CAUSED FROM AGRICULTURAL SOURCES BASED ON MEMBER STATE REPORTS FOR THE PERIOD 2012-2015

Submitted by the Department for Environment, Food and Rural Affairs

24 May 2018

SUBJECT MATTER

1. The purpose of this Commission Report is to assess progress by Member States in implementing the Nitrates Directive, Council Directive 91/676/EEC, in line with the Commission's responsibilities in Article 11 of the Directive. The report collates information reported by 28 Member States (MS) under Article 10 for the period 2012 to 2015. The report includes data on nitrate levels in surface waters and groundwater and coastal waters, eutrophication and monitoring and provides a comparison across MS.
2. The Nitrates Directive (ND) is closely linked to The Water Framework Directive (WFD), The Drinking Water Directive and the Groundwater Directive. The ND is transposed into UK law in the Nitrate Pollution Prevention (England) Regulations 2015; The Nitrate Pollution Prevention (Wales) Regulations 2013 as amended 2015; Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008 as amended; The Nitrates Action Programme Regulations (Northern Ireland) 2014 as amended 2015.
3. The broad findings of the report indicate that the nitrates concentrations for freshwater and groundwater have improved in general across MS compared to the previous reporting period (2008 to 2011). The picture is varied, with some MS action

programmes producing good results and others where further action to reduce and prevent pollution is needed. In the UK and across Europe the nutrient overload from agriculture continues to be one of the biggest pressures on the aquatic environment and on water quality for drinking water sources. Eutrophication in rivers, lakes and coastal waters remains a problem in many MS including in some places in the UK. MS, including the UK, have different pressures and hotspots where pollution is worst.

4. The report provides comparisons of livestock numbers and fertilisation practice and nitrate balances across MS. The report also suggests a number of areas where better harmonisation and improved synergy between the WFD, Nature Directives and the ND is needed.
5. The report lists 8 infringement procedures open with other MS and a number of EU Pilot investigations including one to the UK, in early 2017, which raised concerns about the Nitrates Action Programmes in England and Wales. The UK responded in April 2017 and we are continuing to engage with the Commission about their concerns.
6. Overall in the UK there is a slow but steady decrease in nitrate levels in surface waters and groundwater. Nitrate pollution in the UK is neither best nor worst in comparison with other MS and is generally fairly close to the EU 28 average. Part 9 of SWD(2018) 246 final provides summary information for England, Wales, Scotland and Northern Ireland.
 - River nitrate concentrations have in general been falling slowly since the late 1990s. Some drinking water protected areas are still at risk. Where nitrate concentrations are high in drinking water sources, water companies apply a number of different approaches and treatments to ensure that drinking water supplied to the public is wholesome and within the legal limit for nitrate, ie. 50mg/l nitrate. For 2012 to 2015 the UK was amongst the highest with around 6% of surface water monitoring stations exceeding 50mg/l compared with the EU 28 average of 1.8% [see Figure B of COM(2018) 257 final]. The UK had shown around a 2% decrease compared with 2008 to 2011 (just over 8%) whereas the EU 28 average (2.5%) had decreased by around 0.7%. This corresponds with gradually decreasing livestock numbers and improved fertiliser usage.
 - Groundwater nitrate concentrations are also falling, less so in southern England where concentrations are rising in some places due to the lag effect. It can take up to 60 years for the 1980-90 peak from agricultural loadings to work through to the water table. For 2012 to 2015 the UK was very close to the EU 28 average of 13.2% groundwater monitoring stations exceeding 50mg/l [see Figure A of COM(2018) 257 final]. The UK had decreased from 2008 to 2011 (15%) by just over 1 %.
 - Eutrophic waters account for around 6% of water bodies in the UK.

SCRUTINY HISTORY

7. The Parliamentary scrutiny history relevant to this document is contained in the attached Annex A. Information in this report has contributed to the Drinking Water Directive recast (Council Directive 98/83/EC), which has been scrutinised by Parliament (**EM 5846/18 COM(2017) 753 final: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the quality of water intended for human consumption (recast)** - not cleared by both houses). A House of Commons debate took place on this on 26 March 2018.
8. The recast directive proposal, published 1 February 2018, seeks to include updated World Health Organisation (WHO) guidance on parameters to be monitored to assess drinking water quality, a move to a risk based approach, and the call for increased customer information. 98/83/EC identifies consistency with the ND, and lists nitrate as a parameter in the directive. In the recast proposal, information on parameters such as nitrate is accessible to consumers online in a user friendly and customised way.

See Hansard <https://hansard.parliament.uk/Commons/2018-03-26/debates/b40ffbfd-55e7-489e-8451-4af2ef8c4bfd/DrinkingWaterDirective>

MINISTERIAL RESPONSIBILITY

9. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Government Ministers, Welsh Government Ministers and Northern Ireland Executive Ministers. The devolved administrations have been consulted in the preparation of this Explanatory Memorandum.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. In the UK nitrates policy is devolved, with each country having its own Nitrates Action Programme. England, Wales and Scotland implementation is through a targeted approach with measures being applied in designated Nitrate Vulnerable Zones (NVZs). In Northern Ireland the Nitrates Action Programme applies to the whole country. Data was provided to the Commission for England, Wales, Scotland and Northern Ireland in 2016 and early 2017.
11. This Government does not intend to weaken current environmental protections, and is committed to working closely with the devolved administrations to deliver an approach that works for the whole of the UK after leaving the EU whilst also reflecting individual needs in Scotland, Wales and Northern Ireland. We will continue to engage all the devolved administrations in the design and extent of future legislation.

LEGAL AND PROCEDURAL ISSUES

12. There are no legal or procedural issues. This is not a proposal for legislation.

- i. Legal Basis**
Not applicable.
- ii. European Parliament Procedure**
Not applicable.
- iii. Voting Procedure**
Not applicable.
- iv. Impact on UK Law**
Not applicable.
- v. Application to Gibraltar**
Not applicable.
- vi. Fundamental Rights Analysis**
Not applicable.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

13. The report does not contain any legislative proposals.

SUBSIDIARITY

14. Not applicable because the report does not contain any legislative proposals.

POLICY IMPLICATIONS (including Exit implications where appropriate)

15. The report may be of interest to the Environmental Audit Committee in relation to its ongoing Nitrates Inquiry. Evidence of current nitrate pollution from agriculture in the UK has been provided to the inquiry by Defra in consultation with the devolved administrations.

England

16. The 25 Year Environment Plan sets out key actions for continuing to tackle pollution from agriculture, including:

- Working with a team of soil scientists to discuss how we can develop soil health metrics. This will be an important tool for farmers to help them manage their nitrate resources better;
- Working with land managers and others to consider the role of a universally accessible environmental land management scheme that

encourages broad participation and secures environmental improvements countrywide;

- Putting in place a robust framework to limit inputs of nitrogen rich fertilisers such as manures, slurries and chemicals to economically efficient levels, and make sure they are stored and applied safely;
- Introducing clear rules, advice and, if appropriate, financial support on fertiliser management; and
- Working with industry to encourage the use of low emissions fertiliser, and reviewing the levels of take up using data from the British Fertiliser Practice Survey.

17. As part of the Government commitments in the 25 Year Environment Plan to establish a new environmental land management system, we are reviewing all water and agriculture legislation which implements the WFD. We are gathering and analysing evidence to see whether changes can be made to further improve our measures to tackle diffuse pollution, including from nitrates. A research project has been commissioned to evaluate environmental outcomes resulting from legislation, advice and incentives that are in place.

18. We have also implemented new legislation to help tackle diffuse pollution from agriculture. The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 came into force on 2 April 2018 and are designed to complement and supplement our current implementation of Article 11(3)(h) of the WFD, which include the Nitrates Action Programme. The new rules extend some of the restrictions currently contained in the Nitrate Pollution Prevention Regulations 2015 so that they apply to all agricultural land in England.

19. Currently around 58% of England is designated as NVZs due to nitrate pollution of the water environment, of which:

- 47% of land in England is NVZ because rivers breach the 50 mg/l test.
- 25% of England is NVZ because groundwater breaches the 50 mg/l test.
- 6% of England is NVZ because of eutrophication in estuaries and lakes/reservoirs (13 estuaries and 68 lakes/reservoirs).
- These designations overlap.

Wales

20. In Wales, 84% of groundwaters and 97% of surface waters are assessed as containing below 25 mg nitrate/l.

21. The Welsh Government is currently reviewing its approach to tackling agricultural pollution. The Welsh Government is minded to introduce a whole Wales approach to tackle nitrate pollution from agriculture and that this approach seek to get the right balance of regulatory measures, voluntary initiatives and investment. The options being explored include providing land managers with flexibility whilst also meeting the respective regulatory obligations. The regulatory options under consideration are the designation of the whole of Wales as a NVZ, or the introduction of a suite of measures which will help deal with issues wider than those covered by the ND.

Scotland

22. In Scotland, 66% of waterbodies are assessed at good or better status under the parameters set by the EU WFD for Good Ecological Status. 79% of groundwaters are below 40 mg of nitrate/l, with 92% of surface waters at less than 25 mg nitrate/l.

23. Scotland continues with an integrated approach to implementation of the Nitrates and Water Framework Directives. The Water Environment Controlled Activities (Scotland) Regulations, introduced diffuse pollution general binding rules in 2008. These have been updated in 2011, 2013, and 2018 to introduce further controls, based on agricultural good practice, and continue to play an important role in a national strategy to reduce diffuse pollution from agriculture. The Action Programme for Nitrate Vulnerable Zones taking a targeted approach in areas where nitrate has been identified as a key driver.

Northern Ireland

24. In Northern Ireland, 38% of water bodies are assessed at good or better status. Nitrate levels in rivers, lakes and groundwaters are generally low. Average nitrate concentration is below 25 mg nitrate/l for 100% of surface freshwaters, with 89% of these below 10 mg nitrate/l. 98% of groundwaters are below 25 mg nitrate/l.

25. Northern Ireland will continue its whole territory approach to reduce nutrient pollution from agriculture through the Nitrates Action Programme and associated Phosphorus Regulations. This is complimented by financial support for farmers to invest in advanced slurry spreading equipment to improve nitrogen efficiency from manures, and targeted water quality measures on farms. Policy to address ammonia emissions from agriculture in Northern Ireland is currently being developed.

Leaving the EU

26. Parliament voted to trigger Article 50 and leave the EU. Until we leave the EU, all the rights and obligations of EU membership remain in force. The outcome of our negotiations with the EU on a future partnership will determine what arrangements apply in future.

27. Nitrate regulations are EU based legislation that is expected to become retained law in each country after we leave the EU.

CONSULTATION

28. Not applicable.

IMPACT ASSESSMENT

29. Not applicable because this is not a legislative proposal.

FINANCIAL IMPLICATIONS

30. As this is not a legislative proposal there are no additional financial implications for the ongoing implementation of the Nitrates Action Programmes in the UK.

TIMETABLE

31. Discussion of this report has not been scheduled with the Environment Council.

OTHER OBSERVATIONS

32. None.



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MINISTER OF STATE FOR AGRICULTURE, FISHERIES AND FOOD
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 91/676/EEC CONCERNING THE PROTECTION OF WATERS AGAINST POLLUTION CAUSED BY NITRATES FROM AGRICULTURAL SOURCES BASED ON MEMBER STATE REPORTS FOR THE PERIOD 2012–2015

COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 91/676/EEC CONCERNING THE PROTECTION OF WATERS AGAINST POLLUTION CAUSED FROM AGRICULTURAL SOURCES BASED ON MEMBER STATE REPORTS FOR THE PERIOD 2012-2015 (AND ADD 2-9)

EM 8705/17, SWD (2017) 153 FINAL: COMMISSION STAFF WORKING DOCUMENT AGRICULTURE AND SUSTAINABLE WATER MANAGEMENT IN THE EU

DATE EM SIGNED: 12/07/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
POLITICALLY IMPORTANT CLEARED, FURTHER INFORMATION REQUIRED (AGENDA FOR REPORT NO 3; 29/11/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1663 - 25/07/2017

EM 8643/17, COM(2017) 198 FINAL: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS AN ACTION PLAN FOR NATURE, PEOPLE AND THE ECONOMY

8643/17 ADD 1: SWD(2017) 139 FINAL: COMMISSION STAFF WORKING DOCUMENT FACTSHEETS PROVIDING DETAILS OF ACTIONS IN THE ACTION PLAN FOR NATURE, PEOPLE AND THE ECONOMY ACCOMPANYING THE DOCUMENT COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS AN ACTION PLAN FOR NATURE, PEOPLE AND THE ECONOMY

DATE EM SIGNED: 05/07/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 22/11/2017)	CLEARED BUT SENT FOR INFORMATION TO ENERGY AND ENVIRONMENT (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1661 - 12/07/2017

EM 10255/17, COM(2017) 312 Final: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTIONS TO STREAMLINE ENVIRONMENTAL REPORTING (AND ADD 1)

DATE EM SIGNED: 26/06/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 22/11/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1660 - 04/07/2017

EM 14637/13, COM(2013) 683 FINAL: REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 91/676/EEC CONCERNING THE PROTECTION OF WATERS AGAINST POLLUTION CAUSED BY NITRATES FROM AGRICULTURAL SOURCES BASED ON MEMBER STATE REPORTS FOR THE PERIOD 2008–2011 (AND ADD 1-4)

DATE EM SIGNED: 28/10/2013

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT REPORT 21 - 01/11/2013	CLEARED AT CHAIRMAN'S SIFT 1522 - 05/11/2013