



Casework Summary **Report**

Case Number: CMS-585

Description: Failure by the Secretary of State for Environment, Food and Rural Affairs ("Secretary of State") to comply with review, consultation and reporting requirements under the Nitrate Pollution Prevention Regulations 2015 ("Nitrate Regulations") and Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2017 ("Farming Rules for Water").

Case Overview

Background/Complaints Summary
The Nitrate Regulations place a number of duties on the Secretary of State to monitor the effectiveness of the restrictions introduced through the Regulations ("the Nitrates Action Programme")¹, to review the extent to which the objectives of the Regulations have been achieved and to review the extent to which they remain appropriate². The Secretary of State must also publish a report of this review, the first of which was due before 31 March 2020, and then at least every five years. Under Regulation 40A of the Nitrate Regulations, the Secretary of State must also prepare a report on the implementation of these Regulations for each relevant period. The first report under Regulation 40A was due by 30 June 2024 and then every four years thereafter. The Nitrate Regulations require Government to consult the public during its reviews of the Nitrates Action Programme and on any proposals stemming from that review. Any proposed changes to designations of Nitrate Vulnerable Zones (NVZs), as a result of a review every four years, must be made public³ and affected landowners have a right to appeal⁴. The Farming Rules for Water also require a post-implementation review to be undertaken at least every five years, considering the extent to which the objectives of the regulations have been achieved and whether they remain appropriate⁵. The deadline for publishing the first of these reports was 2 April 2021. The Office for Environmental Protection (OEP) received a complaint in March 2025 alleging the Secretary of State had failed to comply with his duties to complete the

¹ Regulations 36(7) and 39, The Nitrate Pollution Prevention Regulations 2015

² Regulation 40, The Nitrate Pollution Prevention Regulations 2015

³ Regulation 5, The Nitrate Pollution Prevention Regulations 2015

⁴ Regulation 6, The Nitrate Pollution Prevention Regulations 2015

⁵ Regulation 16, The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018

reviews and reports above, and that the manner in which Defra is proposing to meet these obligations may not satisfy the requirements in the regulations or the public authorities' duty of sufficient inquiry. This is due to:

- a) the order in which Defra is proposing to discharge the obligations in Regulations 39, 40 and 40A of the Nitrate Regulations
- b) the content and quality of the reviews; and
- c) Defra's compliance with the public consultation requirements in Regulation 39 of the Nitrate Regulations.

The OEP had previously considered compliance with reporting duties under the Nitrate Regulations as part of its assessment of a previous complaint⁶. At that time, Defra confirmed it was progressing a post-implementation review of the Nitrate Regulations and the Farming Rules for Water and committed to publishing the relevant reports later that year. We therefore decided to monitor the completion of reviews and reports under Regulations 39, 40 and 40A of the Nitrates Regulations.

OEP Actions

We considered the information submitted by the complainant and requested information from Defra including: confirmation of whether the reviews required by the Nitrates Regulations had been completed, what information was/is to be considered in those reviews and how the Secretary of State has/intends to comply with the relevant consultation requirements. We engaged directly with Defra officials to seek confirmation of when the Secretary of State intends to publish the outstanding reports.

Conclusions and Outcomes

We determined that the report required by Regulation 40 of the Nitrate Regulations was delayed at the time the complaint was submitted; however, it was subsequently published in April 2025⁷. This matter has now been resolved.

The information returned also indicated the Secretary of State may have failed to comply with his duties to publish proposals to revise an existing NVZ for the 2025-2028 period ahead of making the changes. As the changes relate to the extension of one existing site, and an appeals process remains available, we did not consider this to indicate a serious failure to comply with environmental law in this instance and so will not take further enforcement action in relation to this matter.

We determined that the Secretary of State appears to have failed to comply with his reporting requirements under Regulation 40A of the Nitrate Regulations and Regulation 16 of the Farming Rules for Water. During our engagement, Defra confirmed the reports are being progressed with an aim of completing the outstanding reports by October 2025. There have since been delays in meeting this aim, however, Defra is continuing to keep us informed of progress as the reviews are completed.

⁶ <https://www.theoep.org.uk/index.php/investigation/compliance-obligations-imposed-sos-defra-under-nitrate-pollution-prevention>

⁷ https://www.legislation.gov.uk/ukia/2025/84/pdfs/ukia_20250084_en.pdf

In relation to consultation requirements under Regulation 39 of the Nitrate Regulations, we concluded the information provided does not indicate that there may have been a failure to comply with obligations to undertake the review. However, there is an indication the Secretary of State may have failed to comply with obligations to consult during the process of that review. Defra confirmed it is currently considering how the Secretary of State will comply with the duty to consult on proposals in light of the review.

In view of these steps, we did not consider that commencing an investigation at this time would be appropriate. We advised that Defra ensure the consultation requirements for both undertaking the reviews, and any proposals in light of the review, are complied with and transparent. We also included a recommendation in our report of our investigation into that the legal review of FRfW regulations should be completed and published as soon as possible.⁸

The OEP will continue to monitor the Secretary of State's compliance with these obligations and progress in completing the outstanding reports.

⁸ <https://www.theoep.org.uk/report/oep-welcomes-revised-guidance-over-farming-rules-water-regulations-and-result-now-able-close>