

2019 No. 183

ENVIRONMENTAL PROTECTION

**The Nutrient Action Programme (Amendment) Regulations
(Northern Ireland) 2019**

Made - - - - - *24th September 2019*

Coming into operation - - - - - *15th October 2019*

The Department of Agriculture, Environment and Rural Affairs, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment, in exercise of the powers conferred by that section and in exercise of the powers conferred by Article 32 of the Waste and Contaminated Land (Northern Ireland) Order 1997(c), and now vested in it(d) makes the following Regulations.

In accordance with Article 32(3) of that Order the Department has published in the Belfast Gazette a notice indicating the effect of these Regulations and specifying the matters referred to in subparagraph (a)(i) to (iii). The Department has taken into consideration the representations made to it in accordance with that notice.

Citation and commencement

1. These Regulations may be cited as the Nutrient Action Programme (Amendment) Regulations (Northern Ireland) 2019 and come into operation on 15th October 2019.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(e) applies to these Regulations as it applies to an Act of the Assembly.

Amendments to the Nutrient Action Programme Regulations (Northern Ireland) 2019

3. The Nutrient Action Programme Regulations (Northern Ireland) 2019(f) are amended as follows.

Amendment of regulation 3

4. In regulation 3(2), insert the following definitions in alphabetic order—

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- (a) S.I. 2008/301
(b) 1972 c. 68
(c) S.I. 1997 No.2778 (N.I. 19)
(d) S.R. 2016 No. 76, article 8(1)(c)
(e) 1954 c.33 (N.I.)
(f) S.R. 2019 No. 81

““derogated holding” means a grassland holding for which a derogation has been granted;

“derogation” means a derogation from the limit of livestock manure that can be applied to land each year, granted by the Department in accordance with regulation 39;

“derogation application” means an application for derogation submitted by the controller to the Department in such manner as it may require;

“low emission slurry spreading equipment” means equipment which is used to spread slurry by bandspreading, dribble bar, trailing hose, trailing shoe, soil incorporation or soil injection methods;”.

Amendment of regulation 8

5. In regulation 8—

(a) in paragraph (2)(f) for “Schedule 4” substitute “Part 1 of Schedule 4”;

(b) after paragraph (2)(f) insert—

“(g) taking into account the risk assessment set out in Part 2 of Schedule 4, there is a significant risk of causing water pollution.”;

(c) in paragraph (9) after sub-paragraph (c) insert—

“(d) paragraph (5)(f) shall apply as if for 3 metres there were substituted 5 metres.”;

(d) in paragraph (11)—

(i) omit sub-paragraph (c);

(ii) for sub-paragraph (d) substitute—

“(d) where it is not practical to comply with sub-paragraph (a) or (b) or paragraph (13), on a field due to the slope, the appropriate person may then spread on that field, close to the ground using inverted splash plate spreading and must keep a record of such spreading, in such format as the Department may specify.”.

Amendment of regulation 9

6. In regulation 9(1), for “The” substitute “Except where regulation 39 applies, the”.

Amendment of regulation 12

7. In regulation 12, after paragraph (4) insert—

“(4A) Paragraphs (2) and (3) shall not apply in relation to the controller where anaerobic digestate is produced—

(a) on the holding on which it is to be applied; and

(b) from livestock manure or non-waste feedstocks generated on the holding.”.

Amendment of regulation 13

8. In regulation 13, after paragraph (3) insert—

“(4) The application limits set out in Table 2 of Schedule 3 shall have effect from 1st January 2020.”.

Amendment of regulation 16(2)

9. In regulation 16(2)—

(a) in sub-paragraph (h) omit “and”

(b) in sub-paragraph (i) for “Schedule 2.” substitute “Schedule 2; and”

(c) after sub-paragraph (i) insert—

“(j) in the case of a derogated holding, a description of the housing and manure storage system, including the volume of manure storage available.”.

Amendment of regulation 20

10. In regulation 20(3), for “with” substitute “within”.

Amendment of regulation 21

11. In regulation 21—

(a) for paragraph (2) substitute—

“(2) If poultry litter or anaerobic digestate fibre is to be stored in a field heap, the controller must inform the Department in such manner as it may require.”;

(b) omit paragraph (3);

(c) in paragraph (4) after “poultry litter” insert “ or anaerobic digestate fibre”.

Amendment of regulation 27

12. In regulation 27—

(a) in paragraph (1)(h), for “any communication given to the Department” substitute “the reason why that regulation applies to any particular field”;

(b) in paragraph (1)(k), for “regulation 13(1) or 14(1)” substitute “regulation 12(2), 13(1) or 14(1)”;

(c) in paragraph (1)(m) at the end omit “and”

(d) in paragraph (1)(n) for “manure.” substitute “manure; and”

(e) after paragraph (1)(n) insert—

“(o) where regulation 21(2) applies, particulars of any communications given to the Department.”;

(f) in paragraph (2), for “(1)(a) to (m)” substitute “(1)(a) to (m) and (o)”;

(g) for paragraph (3) substitute—

“(3) Records under paragraph (1)(n) shall be prepared for each calendar year and shall be submitted to the Department by 1st March of the following year for derogated holdings and by 31st January of the following year for all other holdings, in a format specified by the Department and a copy shall be retained by the controller for a period of 5 years from the date of preparation or submission whichever is later.”;

(h) after paragraph (3) insert—

“(3A) Where the controller is required to prepare a fertilisation plan in relation to a derogated holding for a calendar year they shall prepare that plan no later than 1st March in that calendar year.”.

Amendment of regulation 31

13. In regulation 31(2), for “21(3)(d) and 30(2)(c)” substitute “30(2)(c) and 40(4)”.

Amendment of regulation 32

14. In regulation 32—

(a) for paragraph (1) substitute—

“(1) It shall be an offence for the controller to fail to comply without reasonable excuse with regulation 4, 9(1), 17(1) or (3), 18, 25, 27(3), 40(3) or Schedule 8 except paragraph 4.”

;

(b) for paragraph (3) substitute—

“(3) It shall be an offence for the controller to fail to comply with regulation 9(5), 10, 11(1) or (2), 13(1), 14(1), 22, 27(1), (2), (3A) or (4), 28, 40(5) or paragraph 4 of Schedule 8.”;

(c) after paragraph (3) insert—

“(3A) It shall be an offence—

- (a) for the controller in relation to a derogated holding to fail to comply with regulation 16(1) or (4);
- (b) for the controller in relation to any other holding to fail to comply without reasonable excuse with regulation 16(1) or (4).”.

Amendment of regulation 35

15. In regulation 35, after paragraph (6) insert—

“(7) As part of the review conducted under this regulation, the Department must review the overall position of derogations granted under regulation 39(3) against the effectiveness in meeting objectives of reducing water pollution from nutrients and preventing further pollution.”.

Insert Part 10

16. After Part 9 insert—

“PART 10

Derogation from measures governing the limits on land application of livestock manure

39.—(1) A controller may submit to the Department an application for an annual authorisation by such date as may be specified by the Department in a calendar year to apply grazing livestock manure containing up to 250kg nitrogen per hectare in that year.

(2) In the application referred to in paragraph (1), the controller shall undertake in writing to submit to all the controls provided for in regulation 40 and to fulfil the conditions set out in Schedule 8.

(3) An authorisation to apply an amount of livestock manure containing up to 250kg nitrogen per hectare per year shall be granted by the Department, subject to the conditions set out in Schedule 8.

40.—(1) The Department shall carry out administrative controls in respect of all applications for authorisation for the assessment of compliance with the conditions set out in Schedule 8.

(2) The Department shall refuse a derogation application as follows—

- (a) where it is demonstrated that those conditions are not fulfilled, the Department shall refuse the application within a period of 28 days from the date specified by the Department in accordance with regulation 39(1) and the applicant shall be informed of the reasons for refusal, but;
- (b) where the Department has not notified the applicant of a refusal within the period mentioned in sub-paragraph (a), the derogation shall be deemed to have been granted.

(3) Where it is established that in any year, a grassland holding covered by an authorisation did not fulfil the conditions set out in Schedule 8, the controller commits an offence and shall not be eligible for an authorisation the following year.

(4) The controller may appeal the decision by the Department in relation to a refusal under paragraph (2) or in relation to an authorisation under paragraph (3) in accordance with the procedure set out in regulation 31.

(5) Where the derogation has been granted or deemed to have been granted, the controller shall prepare and retain a fertilisation plan.”.

Amendment of Schedule 2

17. At the end of Schedule 2 insert—

“Criteria as to calculation of phosphorus balance

1.—(1) Phosphorus balance is the difference between phosphorus inputs to the holding less the total of phosphorus outputs leaving the holding. It is calculated per unit area of agricultural land on the holding for each calendar year.

(2) Phosphorus inputs include, when imported on to the holding—

- (a) the total amount of phosphorus in chemical fertiliser;
- (b) the total amount of phosphorus in feedstuffs (calculated using values from Table 7); and
- (c) the total amount of phosphorus in organic manure (calculated using values from Table 2).

(3) Phosphorus outputs include, when exported from the holding—

- (a) the total amount of phosphorus in produce, for example, meat, milk and crops (calculated using values from Table 7); and
- (b) the total amount of phosphorus in organic manure (calculated using values from Table 2).

(4) Inputs of phosphorus to agricultural land in precipitation and losses of phosphorus from the holding to any waterway or water contained in any underground strata are excluded from the balance calculation.

Table 7

Phosphorus (P) content of agricultural products and feedstuffs

<i>Agricultural product</i>	<i>Phosphorus content (% fresh weight)</i>
Poultry concentrate	0.5 (or actual declared content)
Pig concentrate	0.48 (or actual declared content)
Ruminant concentrate	0.55 (or actual declared content)
All other concentrates	0.58 (or actual declared content)
Cattle	0.66
Milk	0.10
Sheep	0.54
Wool	0.04
Pigs	0.50
Poultry	0.58
Eggs	0.22
Straw	0.10
Silage	0.06
Hay	0.30
Potatoes	0.04
Oats	0.29
Barley	0.30
Wheat	0.26

<i>Agricultural product</i>	<i>Phosphorus content (% fresh weight)</i>
Maize	0.25
Full fat soya	0.45
Linseed	0.81
Rape	1.10
Soya	0.68
Sunflower	0.93
Gluten	0.96
Citrus	0.1
Wheat distillers	0.77
Corn distillers	0.77
Peas	0.44
Palm kernel	0.63
Pollard	1.00
Soya hulls	0.14
Sugar beet	0.1
Grass fresh	0.06
Whole crop wheat fresh	0.09
Whole crop wheat silage	0.09
Forage maize fresh	0.07
Forage maize silage	0.07

Amendment of Schedule 3

18. In Schedule 3—

- (a) the heading of Table 2(b) for “under” substitute “over”;
- (b) in Table 3—
 - (i) for the entry “Pig slurries” substitute—

“Pig slurries”⁽²⁾			
	2	0.4	0.8
Pig slurry ⁽³⁾	4	0.75	1.5
	6	1.1	2.2
Separated pig slurry (liquid portion)	3	0.55	1.1

⁽²⁾ 50% of phosphate availability assumed at soil phosphorus index of 0 or 1 and for potatoes and vegetables.

⁽³⁾ Figures in bold are most common values.”

- (ii) in the text for the entry “Other organic manures” at the end insert “For anaerobic digestate the record of nutrient content analysis as required by regulation 12(1) shall be used.”.

Amendment of Schedule 4

19. In Schedule 4—

- (a) after the heading in Schedule 4 insert—

“PART 1”

- (b) in Table 1—
 - (i) for the heading of the fifth column substitute “*Chemical fertiliser*”;
 - (ii) for the entry “Distance from spreading area to lake” substitute—

“Distance from spreading area to lake	High	less than 30 metres	less than 30 metres	less than 10 metres
	Medium	30 – 40 metres	30 – 40 metres	10 – 15 metres
	Low	greater than 40 metres	greater than 40 metres	greater than 15 metres”

(c) at the end of Schedule 4 insert—

“PART 2

Risk assessment for fertiliser application to land other than steeply sloping land

1. If an application of organic manure (including livestock manure) or chemical fertiliser to sloping land is proposed, a risk assessment must be undertaken in addition to meeting all relevant requirements of these Regulations. The factors set out in Table 3 shall be considered in making this risk assessment. Table 4 shall be consulted to ascertain whether fertiliser application is permitted.

Table 3**Risk assessment for fertiliser application to land other than steeply sloping land**

<i>Factor</i>	<i>Risk Level</i>	<i>Organic Manures</i>		<i>Chemical Fertiliser</i>	
		Grassland	Other land	Grassland	Other land
Slope percentage incline	High	20% or more (See Part 1)	15% or more (See Part 1)	20% or more (See Part 1)	15% or more (See Part 1)
	Medium	10 to less than 20%	10 to less than 15%	10 to less than 20%	10 to less than 15%
	Low	Less than 10%	Less than 10%	Less than 10%	Less than 10%
Distance from spreading area to waterway other than lakes	High	Less than 10 metres (see Note 1)		Less than 2 metres	
	Medium	10 to 20 metres (see Note 2)		2 to 5 metres	
	Low	More than 20 metres		More than 5 metres	
Distance from spreading area to lake	High	Less than 20 metres		Less than 10 metres	
	Medium	20 to 30 metres		10 to 15 metres	
	Low	More than 30 metres		More than 15 metres	
Amount applied per hectare per application	High	More than 50m ³ (liquid) or 50 tonnes (solid)		More than 150kg Nitrogen	
	Medium	25 to 50m ³ (liquid) or 25 to 50 tonnes (solid) (see Note 2)		120 to 150kg Nitrogen	
	Low	Less than 25m ³ (liquid) or 25 tonnes (solid)		Less than 120kg Nitrogen	
Soil conditions at time of proposed slurry application	High	Very wet, compacted soil		Very wet, compacted soil	
	Medium	Wet, poached soil		Wet, poached soil	
	Low	Dry, firm trafficable soil		Dry, firm trafficable soil	
Forecast weather conditions for next 48 hours	High	Heavy rainfall (more than 4mm per hour)		Heavy rainfall (more than 4mm per hour)	
	Medium	Moderate rainfall (0.5 to 4mm per hour)		Moderate rainfall (0.5 to 4mm per hour)	
	Low	Low rainfall (less than 0.5mm per hour)		Low rainfall (less than 0.5mm per hour)	
Arable land only – time to incorporation		Liquid	Solid		
	High	More than 48 hours (see Note 3)	More than 5 days	Not applicable	
	Medium	12 to 48 hours	3 to 5 days	Not applicable	
	Low	Less than 12 hours	less than 3 days	Not applicable	

Note 1: If regulation 8(5)(f) applies, for risk level “high” substitute “medium”.

Note 2: During the month of February and the period of 30th September to 15th October each year the distances and quantity in regulation 8(9) apply: spreading must not be done within 15m of a waterway or 5m if regulation 8(5)(f) applies, 30m of a lake and the application rate must not exceed 30m³ or 30 tonnes per hectare.

Note 3: Where organic manure is applied to an established crop, incorporation is not required, for risk level “high” substitute “medium”.

Table 4

Risk Assessment Determination

<i>Risk Level</i>	<i>Number of factors applicable</i>	<i>Is the land application of fertiliser permitted?</i>
High	One or more factors	No
Medium	Three or more factors	No
	One or two factors	Yes
Low	One or more factors	Yes”

Insertion Schedule 8

20. After Schedule 7, insert Schedule 8 set out in the Schedule.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 24th September 2019



Dave Foster
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

“SCHEDULE 8

Regulations 39 and 40

Conditions applying in relation to a Derogation

1. The following are the conditions for the purposes of regulation 40(1) in relation to the application to land on a grassland holding in any year of livestock manure in excess of the amount specified in regulation 9.

Application of manure and other fertilisers

2. The amount of livestock manure from grazing livestock applied to land each year on a grassland holding, including by the animals themselves, shall not exceed the amount of manure containing 250kg nitrogen per hectare, subject to the conditions laid down in paragraphs 3 to 7.

3. The total nitrogen inputs shall neither exceed the foreseeable nutrient demand of the crop nor the maximum fertilisation rate applicable to the grassland holding, established in these Regulations, and shall take into account the supply from the soil.

4. A fertilisation account, including information related to the management of nitrogen and phosphorus inputs and the management of dirty water shall be prepared and kept for each grassland holding and submitted to the Department for each calendar year by 1st March of the following calendar year.

5. Periodic sampling and analyses of the soil with respect to nitrogen and phosphorus shall be performed by each grassland holding, at least every four years for each homogeneous area of grassland, with regard to crop rotation and soil characteristics.

6. At least one analysis per four hectares shall be carried out.

7. Livestock manure shall not be spread in the autumn before grass cultivation.

8. For each grassland holding, the controller shall ensure that the phosphorus balance, calculated in accordance with paragraph 1 of Schedule 2 and Tables 2 and 7 of that Schedule, does not exceed a surplus of 10kg phosphorus per hectare per year.

9. At least 50% of slurry produced on the holding shall be applied on or before 15th June of each year. Low emission slurry spreading equipment shall be used for any slurry applications after 15th June of each year.

Condition regarding land management

10. Temporary grassland shall be ploughed in spring.

11. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand.

12. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. However, crop rotation may include clover in grassland with less than 50% clover and other leguminous plants that are undersown with grass.

Definitions

13. In this Schedule—

- (a) “autumn” means the months of September, October and November;

- (b) “fertilisation account” means the nutrient balance based on the real use and uptake of nutrients;
- (c) “spring” means the months of March, April and May.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Nutrient Action Programme Regulations (Northern Ireland) 2019 (the principal regulations), following the Commission Decision 2019/1325, granting approval to operate a derogation in accordance with paragraph 2 of Annex III to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources.

Regulation 4 contains additional definitions for derogated holdings.

Regulation 5 introduces requirement for a risk assessment when spreading fertiliser on land other than steeply sloping land and amends the exceptions to relation the land application of slurry.

Regulation 6 provides that a derogated holding is excluded from the 170 kg N/ha/year, limit of livestock manure.

Regulation 7 makes an amendment about the application of anaerobic digestate resulting from biodegradable waste.

Regulation 8 provides that certain application limits have effect from 1st January 2020.

Regulation 9 adds a requirement in relation to a fertilisation plan for a derogated holding.

Regulations 10 correct a drafting error.

Regulation 11 makes an amendment to requirement for storing poultry litter or anaerobic digestate in a field heap.

Regulation 12 amends requirements for records for a derogated holding.

Regulations 13 and 14 contain consequential amendments.

Regulation 15 makes an amendment about reviews.

Regulations 16 inserts a new Part 10 to provide for a derogation from the measure governing the limits on land application of livestock manure, as provided for in paragraph 2(b) of Annex III of the Directive.

Regulation 17 inserts a provision about phosphorus balance for derogated holdings.

Regulation 18 updates the phosphorus content of pig slurry and corrects a drafting error.

Regulation 19 makes amendments to risk assessment for fertiliser application to steeply sloping land, inserts a new risk assessment for such application to all other lands and consequential amendments

Regulation 20 inserts a new Schedule 8 setting out the conditions applying to a derogation.

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