WELSH STATUTORY INSTRUMENTS

2010 No. 489 (W.55)

AGRICULTURE, WALES

WATER, WALES

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2010

Made - - - -	*1 March 2010*
Laid before the National Assembly for Wales - -	*2 March 2010*
Coming into force - -	*24 March 2010*

The Welsh Ministers are designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to matters relating to the protection of waters against pollution caused by nitrates from agricultural sources and the conservation of wild habitats of flora and fauna and make the following Regulations under the powers conferred by that section.

Annotations:

F1 S.I. 2001/2555 and S.I. 2002/248 conferred powers on National Assembly for Wales. By virtue of section 59 of and paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006, that designation now vests with the Welsh Ministers.

F2 1972 c. 68.

Title, application and commencement

1. The title of these Regulations is the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2010, they apply in relation to Wales and they come into force on 24 March 2010.

Amendments to the Nitrate Pollution Prevention (Wales) Regulations 2008

2. The Nitrate Pollution Prevention (Wales) Regulations 2008 [F3] are amended in accordance with regulations 3 to 11.

Annotations:

F3 S.I. 2008/3143.

Amendment of Part 1

3.—(1) Part 1 (Introduction) is amended as follows.

(2) For regulation 6 (interpretation), substitute—

"**Interpretation**

6. In these Regulations—

"Agency" ("*yr Asiantaeth*") means the Environment Agency;

"agricultural area" ("*ardal amaethyddol*") means any agricultural land used for agricultural purposes;

"agriculture" ("*amaethyddiaeth*") has the same meaning as in section 109(3) of the Agriculture Act 1947;

"crop with high nitrogen demand" ("*cnwd â galw mawr am nitrogen*") includes, but not limited to, grass, potatoes, sugar beet, maize, wheat, oilseed rape, barley, brassicas, rye and triticale;

"derogated holding" ("*daliad a randdirymwyd*") means a holding over which a derogation has been granted;

"derogation" ("*rhanddirymiad*") means a derogation from the limit of the total amount of nitrogen in livestock manure that can be applied to land each year as provided for in paragraph 2(b) of Annex III of Council Directive 91/676/EEC granted by the Commission Decision 2009/431/EEC[F4] granted by the Agency or, on appeal, the derogation application appeals panel under regulation 13B;

"derogation application" ("*cais i randdirymu*") means an application for a derogation;

"eutrophic" ("*ewtroffig*") means water that is enriched by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life that produces an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned;

"fertilisation plan" ("*cynllun gwrteithio*") means a plan prepared under regulation 14(1)(c) or other similar plans required under Schedule 4;

"grass" ("*porfa*") means—

(a) permanent grassland or temporary grassland (temporary means for less than four years);

(b) existing between the sowing and ploughing the grass; and

(c) including crops under-sown with grass,

but does not include grassland with 50% or more clover;

"grazing livestock" ("*da byw sy'n pori*") means any animal specified in Table 1 in Schedule 1;

"holding" ("*daliad*") means all the land located within a nitrate vulnerable zone and its associated buildings that are at the disposal of the occupier and which are used for the growing of crops in soil or rearing of livestock for agricultural purposes;

"land that has a low run-off risk" ("*tir y mae'r risg o oferu drosto yn isel*") means land that—

(a) has an average slope less than 3º;

(b) does not have land drains (other than a sealed impermeable pipe); and

(c) is at least 50 metres from a watercourse or conduit leading to a watercourse;

"livestock" ("*da byw*") means any animal (including poultry) specified in Schedule 1;

"manufactured nitrogen fertiliser" ("*gwrtaith nitrogen a weithgynhyrchwyd*") means any nitrogen fertiliser (other than organic manure) manufactured by an industrial process;

"manufactured phosphate fertiliser" ("*gwrtaith ffosffad a weithgynhyrchywd*") means any phosphate fertiliser (other than organic manure) manufactured by an industrial process;

"nitrogen fertiliser" ("*gwrtaith nitrogen*") means any substance containing one or more nitrogen compounds used on land to enhance growth of vegetation and includes organic manure;

"non-grazing livestock" ("*da byw nad ydynt yn pori*") means any animal specified in Table 2 in Schedule 1;

"organic manure" ("*tail organig*") means any nitrogen fertiliser or phosphate fertiliser derived from animal, plant or human sources and includes livestock manure;

"phosphate fertiliser" ("*gwrtaith ffosffad*") means any substance containing one or more phosphorus compounds used on land to enhance growth of vegetation and includes organic manure;

"poultry" ("*dofednod*") means poultry specified in Schedule 1;

"sandy soil" ("*pridd tywodlyd*") means any soil over sandstone, and any other soil where —

(a) in the layer up to 40 cm deep, there are—

(i) more than 50 per cent by weight of particles from 0.06 to 2 mm in diameter,

(ii) less than 18 per cent by weight of particles less than 0.02 mm diameter, and

(iii) less than 5 per cent by weight of organic carbon; and

(b) in the layer from 40 to 80 cm deep, there are—

(i) more than 70 per cent by weight of particles from 0.06 to 2mm in diameter,

(ii) less than 15 per cent by weight of particles less than 0.02 mm diameter, and

(iii) less than 5 per cent by weight of organic carbon;

"shallow soil" ("*pridd tenau*") is soil that is less than 40 cm deep;

"slurry" ("*slyri*") means excreta produced by livestock (other than poultry) while in a yard or building (including any bedding, rainwater or washings mixed with it) that has a consistency that allows it to be pumped or discharged by gravity (in the case of excreta separated into its liquid and solid fractions, the slurry is the liquid fraction);

"spreading" ("*taenu*") includes application to the surface of the land, injection into the land or mixing with the surface layers of the land but does not include the direct deposit of excreta on to land by animals.".

Annotations:
F4 OJ No L 141, 6.6.09, p.48.

Amendment of Part 3

4.—(1) Part 3 (Limiting the application of organic manure) is amended as follows.

(2) At the beginning of paragraph (1) of regulation 12 (application of livestock manure — total nitrogen limit for the whole holding), insert " ;Except where the occupier has been granted a derogation, ".

Insertion of new Part 3A

5. After Part 3 (Limiting the application of organic manure), insert—

" PART 3A

Derogation

Application for a derogation

13A.—(1) An occupier of any holding or any person on the occupier's behalf ("the applicant") may apply to the Agency for a derogation where 80% or more of the agricultural area is sown with grass.

(2) A derogation application must be submitted—

(a) by 30 April 2010 for a 2010 derogation;

(b) in relation to an application for any year after 2010, between the dates of 1 October and 31 December in the calendar year preceding that in respect of which the application is made.

(3) The Welsh Ministers must publish the manner and form in which the application must be made.

(4) The Agency must grant or refuse a derogation application as soon as practicable and notify the applicant of the decision in writing and, where the Agency refuses a derogation application, must give reasons for the refusal at the same time.

(5) The Agency must refuse a derogation application where it considers the granting of the derogation would have an adverse effect on the integrity of—

(a) a European site; or

(b) a European offshore marine site,

where those sites have been subject to an appropriate assessment under regulation 48 of the Conservation (Natural Habitats, & c.) Regulations 1994 [F5].

(6) Where the Agency has refused to grant the derogation application, the applicant may appeal in accordance with the procedure set out in regulation 13B.

(7) Where the Agency has granted the derogation application, the holding to which the derogation applies must be designated by the Agency as a derogated holding for the calendar year in respect of which the application was made.

(8) The occupier must keep a record of the derogation application and decision.

(9) In this regulation—

(a) "European offshore marine site" means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 [F6]; and

(b) "European site" means a European site within the meaning of regulation 10 (meaning of European site) of the Conservation (Natural Habitats, &c.) Regulations 1994.

Appeal against refusal of a derogation application

13B.—(1) Where the Agency has refused a derogation application, the applicant may by notice appeal the decision to an independent panel appointed by the Welsh Ministers for the purpose of these Regulations ("the derogation application appeals panel").

(2) An appeal against a refusal of a derogation application must be submitted within 30 days beginning on the day after the date of the refusal.

(3) The Welsh Ministers must publish the manner and form in which an appeal must be made.

Proceedings of the derogation application appeals panel

13C.—(1) The derogation application appeals panel must consist of an odd number of persons, not being less than 3 persons, and make its decision by a simple majority.

(2) The derogation application appeals panel must consider the appeal and determine whether or not to allow the appeal.

(3) The derogation application appeals panel must arrive at its decision based on documentation submitted to it by the appellant and the Agency, unless it decides that it needs additional information to form a judgement, in which case it may—

(a) request the appellant, or the Agency, to provide additional material; and

(b) in exceptional circumstances may convene an oral hearing.

(4) At an oral hearing the appellant and the Agency have the right to appear.

(5) All parties must bear their own costs.

Effect of derogation application appeals panel findings

13D.—(1) If the derogation application appeals panel allows the appeal, the holding to which the derogation application applies must be designated by the Agency as a derogated holding for that calendar year.

(2) The derogation application appeals panel must—

(a) notify the Agency, the applicant and the Welsh Ministers, as soon as reasonably practicable, of its findings; and

(b) where the appeal is refused, give reasons for the refusal.

Derogated holdings

13E. Schedule 4 has effect in relation to derogated holdings.".

Annotations:
F5 S.I. 1994/2716.
F6 S.I. 2007/1842.

Amendment of Part 4

6.—(1) Part 4 (Crop requirements) is amended as follows.

(2) For paragraph (3) of regulation 15 (additional information to be recorded during the year), substitute—

"(3) Before spreading manufactured nitrogen fertiliser, the occupier must record–

(a) the amount required; and