STATUTORY RULES OF NORTHERN IRELAND

# 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(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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(**3**), and now vested in it(**4**) 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 sub-paragraph (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(**5**) 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(**6**) are amended as follows.

(**1**) S.I. 2008/301
(**2**) 1972 c. 68
(**3**) S.I. 1997 No.2778 (N.I. 19)
(**4**) S.R. 2016 No. 76, article 8(1)(c)
(**5**) 1954 c.33 (N.I.)
(**6**) S.R. 2019 No. 81

**Amendment of regulation 3**

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

""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.