STATUTORY RULES OF NORTHERN IRELAND

2010 No. 411

ENVIRONMENTAL PROTECTION

The Nitrates Action Programme Regulations (Northern Ireland) 2010

Made - - - - 8th December 2010

Coming into operation 1st January 2011

The Department of the Environment and the Department of Agriculture and Rural Development, being departments designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972((**2**) in relation to the environment, acting jointly in exercise of the powers conferred upon them by that section and the Department of the Environment in exercise of the powers conferred on it by Article 32 of the Waste and Contaminated Land (Northern Ireland) Order 1997((**3**) and, in accordance with Article 32(3) of that Order, the Department of the Environment having published a notice indicating the effect of these Regulations and having taken into consideration the representations made to it in accordance with the notice, make the following Regulations.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Nitrates Action Programme Regulations (Northern Ireland) 2010 and shall come into operation on 1st January 2011.

Territorial application

2. These Regulations shall establish and apply an action programme throughout the territory of Northern Ireland as required under the Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004((**4**).

(**1**) S.I. 2008/301
(**2**) 1972 c.68
(**3**) S.I. 1997/2778 (N.I. 19)
(**4**) S.R. 2004 No. 419

Interpretation

3.—(1) The Interpretation Act (Northern Ireland) 1954((**5**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"action programme" means measures regarding the protection of water against pollution caused by nitrates from agricultural sources as set out in Article 5 and Annex III of the Directive;

"adequate effluent collection facilities" means effluent collection facilities that meet the requirements of regulation 11(4);

"agricultural area" means any land suitable for agricultural activities, including any common land used for grazing and excludes areas under farm roads, paths, buildings, woods, dense scrub, rivers, streams, ponds, lakes, sandpits, quarries, areas of peat cutting, bare rock, areas of forestry and areas fenced off or inaccessible other than forests where the use of the same is ancillary to the farming of land for other agricultural purposes;

"agricultural land" has the same meaning as in the Agriculture Act (Northern Ireland) 1949((**6**);

"Appeals Commission" means the Water Appeals Commission for Northern Ireland as specified in Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006(**7**);

"appropriate person" means—

(a) the controller;

(b) any person permitted by the controller to carry out, on their behalf, any activity described in these Regulations;

(c) the owner of any storage facility used for the storage of livestock manure and silage effluent; and

(d) any person using such storage facilities for the storage of livestock manure and silage effluent;

"authorised person" means a person authorised by the Department under Article 72 of the Order in respect of fulfilling its functions;

"available nitrogen" means forms of nitrogen that can be taken up by a crop immediately or within a short period;

"chemical fertiliser" means any fertiliser containing a nitrogen compound which is manufactured or blended by an industrial process;

"Code of Good Agricultural Practice" means the "Code of Good Agricultural Practice for the Prevention of Pollution of Water, Air and Soil" published by the Department of Agriculture and Rural Development (as may from time to time be reissued);

"controller" means in relation to a holding, the person charged with management of the holding for the calendar year in question and in the absence of written agreement to the contrary, the owner of the agricultural area will be taken to be charged with its management;

"crop requirement" means the amount of nitrogen fertiliser which is reasonable to apply to land in any year for the purpose of promoting the growth of the crop having regard to the foreseeable nitrogen supply to the crop from the soil and from other sources, including any previous applications of livestock and other organic manure and any chemical fertilisers estimated as described in the fertiliser technical standards and regulations 8 and 9 of these Regulations;

"Department" means the Department of the Environment;

(**5**) 1954 c.33 (N.I.)
(**6**) 1949 c.2 (N.I.)
(**7**) S.I. 2006/3336 (N.I. 21)

"Departments" mean the Department of the Environment and the Department of Agriculture and Rural Development acting jointly;

"derogated holding" means a holding over which a derogation has been granted;

"derogation" means a derogation from the limit of livestock manure that can be applied to land each year as provided for in paragraph 2(b) of Annex III of the Directive granted by the Commission Decision 2007/863/EC(**8**) and approved by the Department which is valid for one calendar year;

"derogation application" means an application for derogation submitted by the controller using a form provided by the Department;

"Directive" means Council Directive 91/676/EEC((**9**) of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;

"dirty water" means water contaminated by organic manure, urine, effluent, milk and cleaning materials with a Biochemical Oxygen Demand (BOD) no greater than 2000 mg/litre and total nitrogen and dry matter contents as set out in Table 2 of Part 1 of the Schedule;

"environment" means any or all of the following media, namely the air, water and land;

"farmyard manure" means a mixture of bedding material and animal excreta in solid form arising from the housing of cattle, sheep and other livestock, excluding poultry manure, but including spent mushroom compost and the stackable solids fraction from mechanical separation of slurry excluding pig slurry;

"fertilisation account" means an account prepared in accordance with regulation 10(5);

"fertilisation plan" means a plan prepared in accordance with regulation 10(4);

"fertiliser technical standards" means the "DEFRA Fertiliser Manual (RB209) 8th Edition" (as may from time to time be reissued) and any supplementary guidance, and any other publication by DEFRA or the Departments substituting the standards set out in RB209 and any supplementary guidance;

"grassland" means any land on which the vegetation consists predominantly of grass species;

"grassland holding" means a holding where 80% or more of the agricultural area available for manure application is cultivated with grass;

"grazing livestock" means cattle (with the exclusion of veal calves), sheep, deer, goats and horses;

"holding" in relation to a controller means all the agricultural area managed by that controller;

"lake" means a body of standing inland surface water;

"land application" means the addition of materials to agricultural land whether by spreading on the surface of the land, injection into the land, placing below the surface of the land or mixing with the surface layers of the land but does not include the direct deposition of manure onto land by animals;

"livestock" means any animal kept for use or profit;

"livestock manure" means waste products excreted by livestock, or a mixture of litter and waste products excreted by livestock, even in processed form;

"midden" means a storage facility with an impermeable base for solid, stackable organic manure;

"nitrogen compound" means any nitrogen-containing substance except for gaseous molecular nitrogen;

(**8**) OJL 337, 21.12.2007, p. 122-126
(**9**) OJL 375, 31.12.91, p. 1-8

"nitrogen fertiliser" means any substance, including chemical fertiliser, containing a nitrogen compound utilised on land to enhance growth of vegetation;

"notice" means notice in writing;

"the Order" means the Waste and Contaminated Land (Northern Ireland) Order 1997(**10**);

"organic manure" means—

(a) livestock manure; and

(b) nitrogen fertiliser, not being livestock manure or chemical fertiliser, derived from organic matter, and includes sewage sludge, residues from fish farms and other organic wastes;

"Phosphorus Regulations" means the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006(**11**);

"pig enterprise" means any enterprise with more than 10 breeding sow places or 150 finishing pig places;

"poultry enterprise" means any enterprise with more than 500 places;

"poultry litter" means a mixture of bedding material and poultry manure arising from the housing of poultry and with a dry matter content not less than 55%;

"public" means such persons as appear to the Departments—

(a) to be representative of those carrying on any business which—

(i) is, or is likely to be, directly affected by the action programme; or

(ii) relies upon the water environment; or

(b) to have an interest in the protection of the water environment;

"scientific case" means a reasoned case, as set out in guidance issued on these Regulations, designed to demonstrate that the proposed deviation from the values set out in Tables 1, 2 or 3 of Part 1 of the Schedule to these Regulations will have no worse effect on the environment than that caused by using the aforementioned values;

"silage effluent" has the same meaning as in regulation 1(1) of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations (Northern Ireland) 2003((**12**);

"slurry" means—

(a) excreta produced by livestock whilst in a yard or building;

(b) a mixture of such excreta with bedding, rainwater, seepage, washings or any other extraneous material from a building or yard used by livestock or in which livestock manure is stored; or

(c) any other organic manure or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process and includes dirty water that is stored with slurry or mixed with slurry;

"soil fertility status" means the soil reserves available for uptake by the next crop estimated as described in the fertiliser technical standards;

"steeply sloping land" means land which has an average incline of 20% or more in the case of grassland or 15% or more in the case of other land;

"total nitrogen" means the sum of all nitrogen forms including nitrate, nitrite, ammonia and organic nitrogen;

(**10**) S.I. 1997/2778 (N.I. 19)
(**11**) S.R. 2006 No. 488
(**12**) S.R. 2003 No. 319

"underground strata" has the same meaning as in Article 2(2) of the Water (Northern Ireland) Order 1999((**13**);

"Waste Regulations" means the Waste Management Licensing Regulations (Northern Ireland) 2003(**14**);

"water pollution" means the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water;

"waterlogged" means soil where water appears on the surface of the land when pressure is added; and

"waterway" has the same meaning as in Article 2(2) of the Water (Northern Ireland) Order 1999.

(3) Other expressions used in these Regulations have the same meaning as in the Directive.

PART 2

General

Duty of the controller to prevent water pollution

4. The controller of a holding shall not cause or permit, directly or indirectly, the entry of nitrogen fertiliser into any waterway or water contained in any underground strata.

Duty of the controller to comply with these Regulations

5. In complying with any duty under these Regulations, the controller of a holding shall have regard to any guidance which may be issued from time to time by the Department or Departments for the purposes of these Regulations and, in accordance with Article 4 of the Directive, the Code of Good Agricultural Practice as may be amended from time to time.

PART 3

Prevention of water pollution from the application of fertilisers

Periods when the land application of nitrogen fertiliser is prohibited

6.—(1) The land application of chemical fertiliser to grassland shall not be permitted from 15 September in any year to 31 January of the following year.

(2) The land application of chemical fertiliser to any land shall not be permitted from 15 September in any year to 31 January of the following year for crops other than grass unless there is a demonstrable crop requirement between those dates.

(3) The land application of organic manure, excluding farmyard manure and dirty water, to any land shall not be permitted from 15 October in any year to 31 January of the following year.

(4) The land application of farmyard manure to any land shall not be permitted from 31 October in any year to 31 January of the following year.

(**13**) S.I. 1999/662 (N.I. 6)
(**14**) S.R. 2003 No. 493