STATUTORY RULES OF NORTHERN IRELAND

2008 No. 196

ENVIRONMENTAL PROTECTION

The Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2008

Made - - - -	*2nd May 2008*
Coming into operation	*9th June 2008*

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, in exercise of the powers conferred upon them by that section hereby make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 9th June 2008.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendments to the Nitrates Action Programme Regulations (Northern Ireland) 2006

3.—(1) These Regulations amend the Nitrates Action Programme Regulations (Northern Ireland) 2006(**4**) in accordance with paragraphs (2) to (20).

(2) In regulation 3(2), insert the following in alphabetical order—

""*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 Council Directive 91/676/EEC(**5**)

(**1**) S.I. 2008/301
(**2**) 1972 c.68
(**3**) 1954 c.33
(**4**) S.R. 2006/489
(**5**) OJL 375, 31.12.91, p. 1-8

granted by the Commission Decision 2007/863/EC(**6**) 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;

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

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

"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;

"*Phosphorus Regulations"* means the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006(**7**)."

(3) After regulation 6(3), insert—

"(4) The land application of any manure, including dirty water, to a derogated holding shall not be permitted between 15 October in any year and 31 January of the following year where the fertiliser plan indicates a proposal to disturb the soil as part of grass cultivation."

(4) In regulation 9(1) for "The amount" substitute "Save where regulation 10A applies the amount".

(5) In regulation 10(3) for "The amount" substitute "Save where regulation 10A applies the amount".

(6) After regulation 10, insert—

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

10A.—(1) Where the Department approves a derogation for a grassland holding in accordance with this regulation, the total nitrogen in livestock manure from grazing livestock applied to that derogated holding shall not exceed 250kg N/ha/year when calculated in accordance with regulation 9(3) and (4).

(2) For the purposes of this provision "applied" means applied both by land application and by the animals themselves.

(3) With regards to derogation applications, the following provisions apply—

(a) Save for 2008 derogation applications, a controller seeking a derogation shall submit a derogation application annually accompanied by a fertilisation account in accordance with 10A(5) to the Department no later than 1 March for that calendar year.

(b) A controller seeking a derogation for the year 2008 shall submit a derogation application within 28 days of these Regulations coming into operation.

(c) The Department shall grant or refuse a derogation application within 28 days from its receipt and where no response is received prior to the expiry of that period the derogation shall be deemed to have been granted.

(d) The deemed approval of a derogation application shall not preclude service by the Department of a notice under regulation 22.

(**6**) OJL 337, 21.12. 2007, p. 122-126
(**7**) S.R. 2006/488

(e) The controller may appeal the refusal by the Department of the derogation application under paragraph (c) in accordance with the procedure set out in regulation 23.

(4) With regards to fertilisation plans, the following provisions apply—

(a) The controller of a derogated holding shall prepare and keep a fertilisation plan describing crop rotation and the planned application of nitrogen and phosphorus fertilisers to its agricultural area.

(b) Save for the year 2008, fertilisation plans shall be made available on the derogated holding every year no later than 1 March for that calendar year.

(c) Fertilisation plans for the year 2008 shall be made available on the derogated holding by the operational date of the Regulations.

(d) Fertilisation plans shall include:

(i) the number of livestock on the derogated holding;

(ii) a description of livestock housing and manure storage systems, including the volume of livestock manure storage available on the derogated holding;

(iii) the amount of nitrogen from livestock manure produced on the derogated holding calculated in accordance with Schedule 1 Table 1;

(iv) the amount of phosphorus from livestock manure produced on the derogated holding calculated in accordance with Schedule 1 Table 7;

(v) the crop rotation and area of each crop, including a sketch map indicating the location of the area of each crop;

(vi) the derogated holding's foreseeable nitrogen and phosphorus crop requirement in accordance with fertiliser technical standards;

(vii) the quantity of each type of organic manure moved on or off the derogated holding;

(viii) the results of soil analysis relating to nitrogen and phosphorus soil status if available;

(ix) the amount of nitrogen from nitrogen fertilisers applied in each area of the derogated holding under the same cropping regime and soil type calculated in accordance with Schedule 1 Tables 1 to 6;

(x) the amount of nitrogen from other organic manure, excluding livestock manures, applied in each area of the derogated holding under the same cropping regime and soil type, as declared under regulation 9(5) and calculated in accordance with regulation 9(7);

(xi) the amount of phosphorus from phosphorus fertilisers applied in each area of the derogated holding under the same cropping regime and soil type calculated in accordance with Schedule 1 Table 7 of these Regulations and Schedule 2 Table 1 of the Phosphorus Regulations; and

(xii) the amount of phosphorus from other organic manure, excluding livestock manures, applied in each area of the derogated holding under the same cropping regime, as declared in accordance with regulation 2(3) of the Phosphorus Regulations.

(e) Where changes in agricultural practices necessitate changes in the fertilisation plan of a derogated holding the controller shall revise the plan within seven days of such changes taking effect.

(5) With regards to fertilisation accounts—

(a) the controller of a derogated holding shall submit fertilisation accounts for the calendar year to the Department by 1 March of the following year; and

(b) fertilisation accounts shall include:

(i) an account of the nitrogen crop requirement of the derogated holding;

(ii) an account of the nitrogen fertiliser applied to the derogated holding;

(iii) information relating to the derogated holding's management of dirty water; and

(iv) information to allow the calculation of the derogated holding's phosphorus balance.

(6) At least every four years the controller of a derogated holding shall undertake nitrogen and phosphorus soil analysis of every four hectares of the agricultural area of the derogated holding under the same cropping regime and soil type.

(7) The phosphorus balance of a derogated holding calculated in accordance with Schedule 1 Tables 8 and 9 shall not exceed a surplus of 10kg phosphorus per hectare per year."

(7) After regulation 18, insert—

"**18A.** In addition to the measures mentioned in regulations 17 and 18, where regulation 10A applies the controller of a derogated holding shall carry out the following measures:

(a) temporary grassland shall be ploughed in spring;

(b) ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand; and

(c) crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen except for grassland with less than 50% clover and to areas with cereals and pea undersown with grass."

(8) In regulation 19(1) after "paragraph 2" insert "and paragraph (4)".

(9) In regulation 19(3) after "Records under" insert "paragraph (2) of".

(10) After regulation 19(3), insert—

"(4) The controller of a derogated holding shall retain the fertilisation plan and fertilisation account for each calendar year for that derogated holding for 5 years from the date upon which they were prepared or submitted to the Department, whichever is the later."

(11) In regulation 23 after "10(10)" insert ", 10A(3)(e)".

(12) In regulation 24(1):

(a) after "6(3)," insert "6(4),".

(b) after "9(1)" delete "and 10(3)." and insert ", 10(3), 10A(1), 10A(6) and 10A(7).".

(13) In regulation 24(2):

(a) after "10(9)," insert "10A(4), 10A(5),"; and

(b) after "18," insert "18A,".

(14) In regulation 25 delete "found".

(15) After regulation 26(2), insert—

"(3) The Department shall prepare and submit a report to the European Commission in accordance with Article 10 of the Commission Decision."

(16) In Schedule 1 Table 1 insert

Deer (fallow)	> 2 years			13