STATUTORY RULES OF NORTHERN IRELAND

# 2003 No. 259

# EUROPEAN COMMUNITIES
# WATER AND SEWERAGE

## The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2003

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| *Made - - - -* | *31st May 2003* |
| *Coming into operation* | *1st June 2003* |

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 measures relating to the prevention, reduction and elimination of pollution of water, acting jointly in exercise of the powers conferred on them by that section and of every other power enabling them in that behalf, hereby make the following Regulations:

### Citation and commencement

**1.** These Regulations may be cited as the Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2003 and shall come into operation on 1st June 2003.

### Interpretation

**2.**—(1) In these Regulations –

"action programme" means an action programme established in accordance with regulation 6;

"Appeals Commission" means the Water Appeals Commission for Northern Ireland;

"chemical fertilizer" means any fertilizer which is manufactured by an industrial process;

"the Department" means the Department of the Environment;

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

"the Directive" means Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources(**3**);

(**1**) S.I.1989/2393
(**2**) 1972 c. 68
(**3**) O.J. No. L375, 31.12.91, p. 1

"the Departments' offices" means the Department of the Environment offices at Calvert House, 23 Castle Place, Belfast BT1 1FY and the Department of Agriculture and Rural Development offices at Dundonald House, Upper Newtownards Road, Belfast BT4 3SB;

"eutrophication" means the enrichment of water by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned;

"fertilizer" means any substance containing a nitrogen compound or nitrogen compounds utilised on land to enhance growth of vegetation, and may include livestock manure, the residues from fish farms and sewage sludge;

"freshwater" means naturally occurring water having a low concentration of salts, which is often acceptable as suitable for abstraction and treatment to produce drinking water;

"groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

"land application" means the addition of materials to 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;

"livestock" means all animals kept for use or profit;

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

"nitrate vulnerable zone" has the meaning given by regulation 3;

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

"the Objectives" means the objectives specified in Article 1 of the Directive, that is to say –

(a) reducing water pollution caused or induced by nitrates from agricultural sources; and

(b) preventing further such pollution; and

"pollution" means the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment the results of which are such as 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.

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

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

**Nitrate vulnerable zones**

**3.**—(1) In these Regulations, "nitrate vulnerable zone" means any of the areas –

(a) designated by the Departments;

(b) referred to in Schedule 1; and

(c) more particularly shown coloured pink on the maps contained in the volume of maps marked "Volume of Maps of Nitrate Vulnerable Zones (Northern Ireland)", S.R. 2003 No. 259 and deposited at the Departments' offices;

being all known areas of land in Northern Ireland which drain into and contribute to pollution of the waters which the Departments have identified, in accordance with the criteria set out in Schedule 2, as waters affected by pollution and waters which could be affected by pollution if action pursuant to regulation 6 were not taken.

(**4**) 1954 c. 33 (N.I.)

(2) The Departments shall ensure that –

(a) the maps referred to in paragraph (1) are made accessible to the public –

(i) through the Departments' websites; and

(ii) at the Departments' offices;

(b) any person who wishes to know whether his land is included in a nitrate vulnerable zone referred to in Schedule 1 Part 2 is provided with the relevant information (including a hard copy of the relevant extract from the deposited maps) if a request in writing is made to either the offices of the Department of the Environment or the Department of Agriculture and Rural Development and is received by that Department before 2nd August 2003; and

(c) such other steps are taken as the Departments consider appropriate for giving adequate publicity to –

(i) any nitrate vulnerable zone referred to in Schedule 1 Part 2; and

(ii) the right conferred by regulation 9 and how it may be exercised.

(3) The Departments shall, by 19th December 2005 and at least every four years thereafter, review and if necessary revise or add to the designation of nitrate vulnerable zones to take into account changes and factors unforeseen at the time of the previous designation.

(4) For the purposes of facilitating a review carried out pursuant to paragraph (3) the Departments shall, in accordance with the criteria set out in Schedule 2, review and if necessary revise or add to the identification of waters affected by pollution and waters which could be affected by pollution if action pursuant to regulation 6 is not taken.

**Monitoring**

**4.**—(1) For the purpose of the designation and revision of designations of nitrate vulnerable zones, the Department –

(a) subject to paragraph (2), by 19 December 2005 and at least every 4 years thereafter, shall monitor the nitrate concentration in freshwaters over a period of 1 year –

(i) at surface water sampling stations laid down in Article 5(4) of Directive 75/440/EEC(**5**) or at other sampling stations which are representative of surface waters, or at both, at least monthly and more frequently during flood periods; and

(ii) at sampling stations which are representative of groundwater aquifers, at regular intervals and taking into account the provisions of Directive 80/778/EEC(**6**); and

(b) shall review the eutrophic state of fresh surface waters, estuarial and coastal waters by 19th December 2003 and every 4 years thereafter.

(2) Where the nitrate concentrations in all previous samples taken in pursuance of the Directive at any sampling station has been below 25 mg/l and no new factor likely to increase the nitrate content has appeared, paragraph (1)(a) shall have effect in relation to that sampling station as if the reference to 2005 and the reference to 4 years were references to 2009 and 8 years respectively.

(3) Monitoring under this regulation shall be carried out using the reference methods of measurement set out in Schedule 3.

**Code of good agricultural practice**

**5.** With the aim of providing for all waters a general level of protection against pollution, the Department of Agriculture and Rural Development shall –

(**5**) O.J. No. L194, 25.7.75, p. 26
(**6**) O.J. No. L229, 30.8.80, p. 11

(a) establish a code of good agricultural practice, to be implemented by farmers on a voluntary basis, which should contain provisions covering at least the items mentioned in Schedule 4;

(b) set up where necessary a programme, including the provision of training and information for farmers, promoting the application of the code of good agricultural practice.

**Action programmes**

**6.**—(1) The Departments shall, for the purposes of achieving the Objectives, by Regulations under section 2(2) of the European Communities Act 1972, make provision establishing action programmes in respect of nitrate vulnerable zones.

(2) An action programme may relate to more than one nitrate vulnerable zone, and different action programmes may be established in respect of different nitrate vulnerable zones or parts of zones.

(3) An action programme shall be established in respect of a nitrate vulnerable zone designated in accordance with regulation 3(3) not later than one year after the designation of that zone.

(4) An action programme shall be implemented in the case of a nitrate vulnerable zone falling within paragraph (3), within 4 years of its establishment.

(5) The Department shall draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes.

(6) The Departments shall, at least every 4 years, review and if necessary revise the action programmes, including any additional measures taken pursuant to regulation 7(2).

**Contents of action programmes**

**7.**—(1) An action programme shall include –

(a) the provisions described in Schedule 5; and

(b) provisions embodying the measures contained in the code of good agricultural practice established pursuant to regulation 5, other than such provisions as have been superseded by the provisions described in Schedule 5.

(2) Action programmes shall also contain such additional requirements, restrictions and prohibitions as the Departments consider necessary if, at the outset or in the light of experience gained in implementing the programmes, it becomes apparent to them that the provisions referred to in paragraph (1) will not be sufficient for achieving the Objectives.

(3) In determining the provisions of an action programme, the Departments shall take into account –

(a) available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural and other sources;

(b) environmental conditions in the relevant regions.

(4) In selecting the additional provisions referred to in paragraph (2), the Departments shall take into account the effectiveness and cost of such provisions relative to other possible preventative provisions.

**Transfrontier consultation**

**8.**—(1) Where any waters identified by the Departments, in accordance with the criteria in Schedule 2, as waters affected by pollution and waters which could be affected by pollution if action pursuant to regulation 6 were not taken, are affected by pollution from waters from the Republic of Ireland draining directly or indirectly into them, the Departments shall notify the competent authorities in the Republic of Ireland and the Commission of the relevant facts.

(2) The Departments, in consultation with the competent authorities in the Republic of Ireland shall organise, where appropriate with the Commission, the concertation necessary to identify the sources in question and the measures to be taken to protect the waters that are affected.

**Appeals**

**9.**—(1) Any person whose land is included in a nitrate vulnerable zone referred to in Schedule 1 Part 2 may appeal by notice in writing to the Appeals Commission against any factual error which may have been made in applying the methodology(**7**) used by the Departments for identifying those nitrate vulnerable zones.

(2) The notice of appeal must be delivered to the Appeals Commission before 31st August 2003 or within such longer period as the Appeals Commission may allow.

(3) The notice of appeal must state the facts on which the appellant relies in support of his appeal.

(4) The Departments shall ensure that the Appeals Commission is provided with any explanation or information about the methodology or its use which the Appeals Commission needs to determine an appeal under this regulation.

(5) The Appeals Commission shall determine whether or not a factual error was made in applying the methodology used by the Departments for identifying those nitrate vulnerable zones referred to in paragraph (1), and any modification of the nitrate vulnerable zone which is required to rectify that error.

(6) Where the Appeals Commission determines in accordance with paragraph (5) that an error was made, and the modification to the nitrate vulnerable zone which is required to rectify that error, the Department shall give effect to that modification.

**Amendment of the Action Programme for Nitrate Vulnerable Zones Regulations (Northern Ireland) 1999**

**10.**—(1) The Action Programme for Nitrate Vulnerable Zones Regulations (Northern Ireland) 1999, shall be amended in accordance with paragraph (2) and (3).

(2) For the definition of "nitrate vulnerable zone" in regulation 2(1) there shall be substituted the following definition –

> "nitrate vulnerable zone" has the same meaning as in the Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2003"

(3) For paragraph 9(2) of the Schedule (application of organic manure) there shall be substituted the following paragraph –

> "(2) For the purposes of sub-paragraph (2), the specified amount is the sum of –
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> (a) the number of hectares of grassland on the farm multiplied by 250 kg; and
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> (b) the number of hectares of agricultural land other than grassland on the farm multiplied by –
>
> (i) 210 kg in relation to a year ending on or before 1st June 2003 where that land falls within an area referred to in Schedule 1 Part 1 to the Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2003; or
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> (ii) 210 kg in relation to a year ending on or before 1st June 2007 where that land falls within an area referred to in Schedule 1 Part 2 to the Protection of Water Against Nitrate Pollution Regulations (Northern Ireland) 2003; or

(**7**) A description of the methodology is available through DOE and DARD websites and for inspection at the DOE and DARD offices.