

2015 No. 2020 (W. 308)

AGRICULTURE, WALES

WATER, WALES

**The Nitrate Pollution Prevention
(Wales) (Amendment) Regulations
2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nitrate Pollution Prevention (Wales) Regulations 2013 (S.I. 2013/2506 (W.245)) (“the Nitrate Regulations”) and Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (“the Habitats Regulations”).

They implement in Wales Commission Decision 2013/781/EC (OJ No L 346, 20.12.13, p65) granting a derogation pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources (OJ No L 375, 31.12.91, p1, amended by OJ No L 284, 31.10.03, p1, OJ No L 311, 21.11.08, p1).

Regulation 3 amends regulation 6 (Interpretation) of the Nitrate Regulations. Regulation 5 inserts a new Part 3A into the Nitrate Regulations which introduces a procedure by which an application for a derogation must be made and establishes an appeal procedure against refusal of a derogation application.

Regulation 6 inserts a new Schedule 5 into the Nitrate Regulations which sets out additional requirements to be met by an occupier of a derogated holding.

Regulation 7 makes consequential amendments to the Habitats Regulations.

The Welsh Ministers' Code of Practice on the carrying out of regulatory impact assessments was considered in relation to these Regulations. As a result, it was not necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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**The Nitrate Pollution Prevention
(Wales) (Amendment) Regulations
2015**

Made 11 December 2015

Laid before the National Assembly for Wales
14 December 2015

Coming into force 8 January 2016

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to matters relating to the protection of waters against pollution caused by nitrates from agricultural sources and the conservation of wild habitats and of flora and fauna and make the following Regulations under the powers conferred by that section.

Title, application and commencement

1. The title of these Regulations is the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015, they apply in relation to Wales and they come into force on 8 January 2016.

Amendments to the Nitrate Pollution Prevention (Wales) Regulations 2013

2. The Nitrate Pollution Prevention (Wales) Regulations 2013⁽³⁾ are amended in accordance with regulations 3 to 7.

(1) 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, the designations now vest with the Welsh Ministers.

(2) 1972 c. 68.

(3) S.I. 2013/2506 (W. 245).

Amendment of regulation 6 (interpretation)

3.—(1) In regulation 6 (interpretation) in the appropriate place in alphabetical order insert—

“derogated holding” (“*daliad a randdirymwyd*”) means a holding over which a derogation has effect;

“derogation” (“*rhanddirymiad*”) means a derogation granted under Part 3A from the limit of the total amount of nitrogen in livestock manure that can be applied to land each year in accordance with paragraph 2(b) of Annex III of Council Directive 91/676/EEC and Commission Decision 2013/781/EU(1)

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

(2) in the definition “fertilisation plan” after the words “regulation 14 (1) (c)” insert—

□“or other similar plans required under Schedule 5.□.

Amendment of regulation 12 (application of livestock manure – total nitrogen limit for the whole holding)

4.—(1) 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 Natural Resources Body for Wales for a derogation where 80% or more of the agricultural area is sown with grass.

(2) An application under this regulation must be accompanied by a written declaration that the occupier will meet the conditions set out in Schedule 5.

(3) A derogation application must be submitted by 31 December in the calendar year

(1) OJ No L 346, 20.12.2013, p 65.

preceding that in respect of which the application is made.

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

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

(6) The Natural Resources Body for Wales 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 61 of the Conservation of Habitats and Species Regulations 2010⁽¹⁾.

(7) Where the Natural Resources Body for Wales has refused to grant the derogation application, the applicant may appeal in accordance with the procedure set out in regulation 13B.

(8) The Natural Resources Body for Wales must (subject to paragraph (8)) refuse the application if the occupier has been found in breach of the derogation conditions during the calendar year preceding that to which the application relates.

(9) If the occupier is found in breach of the derogation conditions after the date of the application but before it has been determined (and before the calendar year to which the application relates), the Natural Resources Body for Wales may, taking into account the seriousness of the breach, grant or refuse the application.

(10) If the occupier is found in breach of the derogation conditions after the application has been granted (but before the calendar year to which the application relates), the Natural Resources Body for Wales may, taking into account the seriousness of the breach, revoke the derogation by sending written notice to the applicant before the calendar year for which the derogation was granted.

(1) S.I. 2010/490. Relevant amendments were made by S.I. 2012/1927.

(11) Where the Natural Resources Body for Wales grants an application in a case within paragraph (8) or decides not to revoke a derogation in a case within paragraph (9), it must refuse the next application made under regulation 13A by or on behalf of the occupier.

(12) For the purposes of this regulation, a person is to be regarded as having been found in breach of the derogation conditions if—

- (a) the person has been convicted of an offence under regulation 49 which arises from a breach of those conditions and either no further appeal may be made against the conviction or, where there was an appeal, it was decided against the person;
- (b) the person has accepted a simple caution for such an offence.

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

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

(15) 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⁽¹⁾; and
- (b) “European site” has the meaning given by regulation 8 of the Conservation of Habitats and Species Regulations 2010.

Appeal against refusal of a derogation application

13B.—(1) Where the Natural Resources Body for Wales has refused a derogation application, the applicant may by notice appeal against the refusal to an independent panel appointed by the Welsh Ministers for the purpose of these Regulations.

(2) An appeal under this regulation must be submitted before the end of 30 days beginning with the day after the date of the refusal.

(1) S.I. 2007/1842.

(3) An appeal under this regulation must be made in the form and manner published by the Welsh Ministers.

(4) The panel appointed under this regulation must consist of an odd number of persons (and must consist of at least 3 persons).

(5) A decision of the panel is to be made by simple majority.

(6) The panel must base its decision on—

- (a) documents submitted to it by the appellant;
- (b) documents submitted to it by the Natural Resources Body for Wales; and
- (c) such additional information from the appellant or the Natural Resources Body for Wales as it considers necessary.

(7) For the purposes of paragraph (6)(c), the panel may—

- (a) request the appellant or the Natural Resources Body for Wales to provide the additional information; or
- (b) in exceptional circumstances, convene an oral hearing at which the appellant and the Natural Resources Body for Wales may appear.

(8) If the panel allows an appeal under this regulation, the Natural Resources Body for Wales must designate the holding concerned as a derogated holding for the calendar year for which the application was made.

(9) Having determined an appeal under this regulation, the panel must—

- (a) as soon as reasonably practicable, notify in writing the Natural Resources Body for Wales, the appellant and the Welsh Ministers of its determination; and
- (b) where it refuses the appeal, give the reasons for its refusal.

(10) Each party to an appeal under this regulation must bear its own costs.

Derogated holdings

13C. Schedule 5 has effect in relation to derogated holdings.□.

Insertion of new Schedule 5

6. After Schedule 4 (Permitted Crops for the Closed Period), insert the contents of the Schedule to these Regulations.

Amendment of the Conservation of Habitats and Species Regulations 2010

7. In regulation 101(1)(b) of the Conservation of Habitats and Species Regulations 2010 (1) for “2008” substitute “2013”.

Rebecca Evans

Deputy Minister for Farming and Food, one of the
Welsh Ministers

11 December 2015

(1) S.I.2010/490.

SCHEDULE Regulation 6

□ SCHEDULE 5 Regulation 13C

Derogated holdings

1. The following additional requirements apply to derogated holdings.

Introductory

2. In this Schedule “the occupier” means the occupier of a derogated holding.

Derogation from the measures governing the limit on application of livestock manure

3. An occupier of a derogated holding must ensure that in any calendar year for which the derogation has been granted—

$$A \geq (Ngl / 250) + (Nngl / 170)$$

where—

A is the area of the derogated holding (hectares), as existing on 1 January for that calendar year;

Ngl is the total amount of nitrogen (kilogrammes) in livestock manure from grazing livestock, whether applied directly by an animal or by spreading;

Nngl is the total amount of nitrogen (kilogrammes) in livestock manure from non-grazing livestock, whether applied directly by an animal or by spreading.

Planning the spreading of phosphate fertiliser

4.—(1) In addition to the production of nitrogen spreading plans under regulation 14 (planning the spreading of nitrogen fertiliser) the occupier must—

- (a) assess the amount of phosphorus in the soil that is likely to be available for uptake by the crop during the growing season (“the soil phosphorus supply”);
- (b) calculate the optimum amount of phosphate fertiliser that should be spread on the crop, taking into account

the amount of phosphorus available from the soil phosphorus supply; and

- (c) produce a plan for the spreading of phosphate fertiliser for that growing season.

(2) The occupier must do this—

- (a) in the case of any crop other than permanent grassland, before spreading any phosphate fertiliser for the first time for the purpose of fertilising a crop planted or intended to be planted; and
- (b) in the case of permanent grassland, each year beginning on 1 January before the spreading of phosphate fertiliser.

Other requirements for fertilisation plans

5.—(1) The fertilisation plan for the derogated holding must—

- (a) include a sketch plan indicating the location of the fields to which the plan relates; and
- (b) clearly state in relation to any field referred to in the plan the nature of the fertilizer to be used.

(2) The fertilisation plan must record—

- (a) the soil phosphorus supply and the method used to establish this figure;
- (b) the optimum amount of phosphate fertiliser that should be spread on the crop, taking into account the amount of phosphorus from the soil phosphorus supply;
- (c) the amount of nitrogen likely to be available for uptake by the crop from any organic manure intended to be spread for crop uptake in the growing season during the calendar year in which it is spread;
- (d) the amount of phosphate likely to be supplied to meet the requirement of the crop from any organic manure spread or intended to be spread during the calendar year;
- (e) the amount of manufactured nitrogen fertiliser required (that is, the optimum amount of nitrogen required by the crop less the amount of nitrogen that will be available for crop uptake from any organic manure spread during that calendar year); and

- (f) the amount of manufactured phosphate fertiliser required (that is, the optimum amount of phosphate required by the crop less the amount of phosphate supplied for crop uptake from any organic manure spread for the purpose of fertilising the crop during that calendar year).

Soil sampling and analysis

6.—(1) At least every four years the occupier must undertake soil sampling and analysis for the supply of phosphorus of at least every five hectares of the agricultural area of the derogated holding under the same cropping regime and soil type.

(2) An occupier may rely on the results of previous phosphorus soil sampling and analysis of the agricultural area of the derogated holding under the same cropping regime and soil type for the purposes of sub-paragraph (1), provided such sampling and analysis was carried out within four years before the derogation.

(3) Where phosphorus soil sampling and analysis of the agricultural area of the derogated holding under the same cropping regime and soil type has not been carried out within four years before the grant of the derogation, such sampling and analysis must be carried out as follows—

- (a) 75% of the agricultural area no later than 12 months after the grant of the derogation; and
- (b) 100% of the agricultural area no later than 12 months after the date on which the derogation is next granted to the occupier.

Additional information to be recorded during the year

7.—(1) In addition to the information to be recorded under regulation 15 (additional information to be recorded during the year) the occupier must, before spreading organic manure, record—

- (a) the total phosphate content of the organic manure; and
- (b) the amount of phosphate likely to be supplied from the organic manure intended to be spread for the purpose of fertilising the crop in the growing season in which it is spread.

(2) In addition to the requirements of subparagraph (1) the occupier must, before spreading manufactured phosphate fertiliser, record—

- (a) the amount required (that is, the optimum amount of phosphate required by the crop less the amount of phosphate that will be supplied for crop uptake from any organic manure spread); and
- (b) the planned date for spreading (month).

Risk maps

8.—(1) In addition to the requirements under regulation 19 (risk maps), the risk map must—

- (a) show each field marked with a reference number or number to enable cross reference to fields recorded in fertilisation plans;
- (b) correspond with the agricultural area of the derogated holding; and
- (c) be completed by 1 March in the calendar year to which the derogation applies.

(2) Where a change in circumstances affects a matter referred to in paragraph (1), the occupier must update the map within one month of the change.

Maintaining the derogated holding as a grassland holding

9. The occupier must maintain the holding to ensure at least 80% of the agricultural area is sown with grass during the calendar year to which the derogation applies.

Closed period for ploughing grass on the derogated holding

10. No person shall—

- (a) plough temporary grassland on sandy soils between 1 July and 31 December;
- (b) plough grass on sandy soils before 16 January where livestock manure has been spread on that grass between 1 September and 31 December in the previous calendar year; and
- (c) plough grass on soils that are not sandy soils before 16 January where livestock manure has been spread on that grass between 15 October in the previous calendar year and 15 January.

Sowing of crops following grass on the derogated holding

11. Where any grass on the derogated holding is ploughed, the land must be—

- (a) sown with a crop with high nitrogen demand within four weeks beginning on the day after the date of ploughing grass; or
- (b) sown with grass within six weeks beginning on the day after the date of ploughing grass.

Crop rotation on the derogated holding

12. Crop rotation on the derogated holding must not include leguminous or other plants fixing atmospheric nitrogen except for grass with less than 50% clover, or any other leguminous plants that are under-sown with grass.

Recording the size of the derogated holding

13.—(1) An occupier must record the total agricultural area and the area of grass within the derogated holding by 1 March in the calendar year to which the derogation applies.

(2) If the size of the derogated holding or area of grass within it changes the occupier must update the record within one month beginning on the day after the change.

Records relating to storage of manure during the storage period

14. In addition to the requirements of regulation 37 (records relating to storage of manure during the storage period) the occupier must make a record describing the livestock housing and manure storage systems together with the volume of manure storage in place on the holding by 1 March in the calendar year to which the derogation applies.

Record of nitrogen and phosphate produced by animals

15.—(1) The occupier must make a record of the expected number and category (in accordance with the categories in Tables 1 and 2 in Schedule 1) of livestock to be kept on the derogated holding during the calendar year to which the derogation relates.

(2) Following the record making requirements in sub-paragraph (1), the occupier must then

calculate and record the amount of nitrogen and phosphate in manure expected to be produced by the livestock on the holding during that year using Tables 1 and 2 in Schedule 1.

(3) The records to be made in accordance with sub-paragraphs (1) and (2) must be made before 1 March for the calendar year concerned.

Livestock manure intended to be brought on to or sent off the derogated holding

16.—(1) The occupier must—

- (a) make a record of the type and amount of livestock manure that is intended to be brought on to the holding and sent off the holding during the calendar year to which the derogation relates; and
- (b) assess and record the amount of nitrogen in the livestock manure recorded under sub-paragraph (1)(a) in accordance with regulation 39(4) and Parts 1 and 2 of Schedule 3.

(2) The records to be made under sub-paragraph (1) must be made by 1 March for the calendar year to which the derogation relates.

Records of crops sown

17. In addition to the requirements of regulation 42 (records of crops sown) an occupier who intends to spread phosphate fertiliser must, within one week of sowing a crop record—

- (a) the crop sown; and
- (b) the date of sowing.

Records of spreading phosphate fertiliser

18. In addition to the requirements of regulation 43 (records of spreading nitrogen fertiliser), an occupier must record—

- (a) within one week of spreading organic manure—
 - (i) the total phosphorus content; and
 - (ii) the amount of phosphate that was supplied for uptake by the crop; and
- (b) within one week of spreading manufactured phosphate fertiliser—
 - (i) the date of spreading; and
 - (ii) the amount of phosphate spread.

Recording the date of ploughing

19. In addition to the requirements of regulation 44 (subsequent records) an occupier must record within one week of ploughing on the derogated holding, the date of that ploughing.

Fertilisation accounts

20.—(1) An occupier, or any person on behalf of the occupier, must submit fertilisation accounts for the calendar year to the Natural Resources Body for Wales by 30 April of the following year.

(2) The Natural Resources Body for Wales must publish the manner and form in which the fertilisation account must be made.

(3) The fertilisation account must record—

- (a) the total agricultural area of the derogated holding;
- (b) the area of the derogated holding covered by—
 - (i) winter wheat;
 - (ii) spring wheat;
 - (iii) winter barley;
 - (iv) spring barley;
 - (v) winter oilseed rape;
 - (vi) sugar beet;
 - (vii) potatoes;
 - (viii) forage maize;
 - (ix) grass; and
 - (x) other crops;
- (c) the number and category of animals kept on the derogated holding during the previous calendar year in accordance with the categories described in Tables 1 and 2 in Schedule 1;
- (d) the amount of nitrogen and phosphate in the manure produced by the animals on the derogated holding during the previous calendar year using Tables 1 and 2 in Schedule 1;
- (e) the amount, type and characteristics of livestock manure brought on to or sent off the derogated holding during the calendar year to which the derogation relates;
- (f) the amount of nitrogen and phosphate in the manure recorded under sub-

paragraph (3)(e) calculated in accordance with paragraph 14(2);

- (g) the weight (tonnes) and nitrogen content of all manufactured nitrogen fertiliser stocks kept on the derogated holding between 1 January and 31 December in the calendar year to which the derogation relates; and
- (h) the weight (tonnes) and nitrogen content of all manufactured nitrogen fertiliser brought on to and sent off the derogated holding between 1 January and 31 December in the calendar year to which the derogation relates.□.