

**2009 No. 3160**

**AGRICULTURE, ENGLAND**

**WATER, ENGLAND**

**The Nitrate Pollution Prevention (Amendment) Regulations  
2009**

<i>Made</i> - - - -	<i>2nd December 2009</i>
<i>Laid before Parliament</i>	<i>7th December 2009</i>
<i>Coming into force</i> - -	<i>28th December 2009</i>

The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment and makes the following Regulations under the powers conferred by that section.

**Citation and commencement**

1. These Regulations—
  - (a) may be cited as the Nitrate Pollution Prevention (Amendment) Regulations 2009; and
  - (b) come into force on 28th December 2009.

**Amendments to the Nitrate Pollution Prevention Regulations 2008**

2. The Nitrate Pollution Prevention Regulations 2008<sup>(c)</sup> are amended in accordance with regulations 3 to 11.

**Amendment of Part 1**

- 3.—(1) Part 1 (Introduction) is amended as follows.
  - (2) For paragraph (2) of regulation 3 (coming into force), substitute—

“(2) Regulation 22(1) and Part 7 come into force on 1st January 2012, unless the holding is within an area marked as a NVZ deferred slurry storage area on the maps marked “Nitrate Vulnerable Zones (England 2009)”<sup>(d)</sup> and deposited at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR, where these provisions come into force on 1st January 2013.”.
  - (3) For regulation 6 (interpretation), substitute—

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(a) S.I. 2008/301.

(b) 1972 c.68.

(c) S.I. 2008/2349.

(d) These maps, for illustrative purposes only, can be accessed on [www.defra.gov.uk/environment/quality/water/waterquality/diffuse/nitrate/nvz2008.htm](http://www.defra.gov.uk/environment/quality/water/waterquality/diffuse/nitrate/nvz2008.htm), but the version deposited at the offices of the Secretary of State is the definitive version.

## “Interpretation

### 6. In these Regulations—

“Agency” means the Environment Agency;

“agricultural area” means any agricultural land used for agricultural purposes;

“agriculture” has the same meaning as in section 109(3) of the Agriculture Act 1947;

“crop with high nitrogen demand” includes, but not limited to, grass, potatoes, sugar beet, maize, wheat, oilseed rape, barley, brassicas, rye and triticale;

“deemed derogation” means a derogation granted under regulation 13B;

“derogated holding” means a holding over which a derogation has been granted;

“derogation” means a derogation from the limit of the total amount of nitrogen in 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 granted by the Commission Decision 2009/431/EEC(a) and deemed or granted by the Agency or, on appeal, the derogation application appeals panel under regulation 13C;

“derogation application” means an application for a derogation;

“eutrophic” means water that is enriched by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life that produces an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned;

“fertilisation plan” means a plan prepared under regulation 14(1)(c) or other similar plans required under Schedule 4;

“grass” means—

- (a) permanent grassland or temporary grassland (temporary means for less than four years);
- (b) existing between the sowing and ploughing the grass; and
- (c) including crops under-sown with grass,

but does not include grassland with 50% or more clover;

“grazing livestock” means any animal specified in Table 1 in Schedule 1;

“holding” means all the land located within a nitrate vulnerable zone and its associated buildings that are at the disposal of the occupier and which are used for the growing of crops in soil or rearing of livestock for agricultural purposes;

“land that has a low run-off risk” means land that—

- (a) has an average slope less than 3°;
- (b) does not have land drains (other than a sealed impermeable pipe); and
- (c) is at least 50 metres from a watercourse or conduit leading to a watercourse;

“livestock” means any animal (including poultry) specified in Schedule 1;

“manufactured nitrogen fertiliser” means any nitrogen fertiliser (other than organic manure) manufactured by an industrial process;

“manufactured phosphate fertiliser” means any phosphate fertiliser (other than organic manure) manufactured by an industrial process;

“nitrogen fertiliser” means any substance containing one or more nitrogen compounds used on land to enhance growth of vegetation and includes organic manure;

“non-grazing livestock” means any animal specified in Table 2 in Schedule 1;

“organic manure” means any nitrogen fertiliser or phosphate fertiliser derived from animal, plant or human sources and includes livestock manure;

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(a) OJ No L 141, 6.6.09, p48.

“phosphate fertiliser” means any substance containing one or more phosphorus compounds used on land to enhance growth of vegetation and includes organic manure;

“poultry” means poultry specified in Schedule 1;

“sandy soil” means any soil over sandstone, and any other soil where—

- (a) in the layer up to 40 cm deep, there are—
  - (i) more than 50 per cent by weight of particles from 0.06 to 2 mm in diameter,
  - (ii) less than 18 per cent by weight of particles less than 0.02 mm diameter, and
  - (iii) less than 5 per cent by weight of organic carbon; and
- (b) in the layer from 40 to 80 cm deep, there are—
  - (i) more than 70 per cent by weight of particles from 0.06 to 2mm in diameter,
  - (ii) less than 15 per cent by weight of particles less than 0.02 mm diameter, and
  - (iii) less than 5 per cent by weight of organic carbon;

“shallow soil” is soil that is less than 40 cm deep;

“slurry” means excreta produced by livestock (other than poultry) while in a yard or building (including any bedding, rainwater or washings mixed with it) that has a consistency that allows it to be pumped or discharged by gravity (in the case of excreta separated into its liquid and solid fractions, the slurry is the liquid fraction);

“spreading” includes application to the surface of the land, injection into the land or mixing with the surface layers of the land but does not include the direct deposit of excreta on to land by animals.”.

### **Amendment of Part 3**

4.—(1) Part 3 (Limiting the application of organic manure) is amended as follows.

(2) 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 Agency for a derogation where 80% or more of the agricultural area is sown with grass.

(2) A derogation application must be submitted between the following dates—

- (a) 1st January 2010 and 31st March 2010 for a 2010 derogation;
- (b) in relation to an application for any year after 2010, 1st October and 31st December in the calendar year preceding that in respect of which the application is made.

(3) The Secretary of State must publish the manner and form in which the application must be made.

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

(5) The Agency 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 48 of the Conservation (Natural Habitats, & c.) Regulations 1994(a).

(6) Where the Agency has refused to grant the derogation application, the applicant may appeal in accordance with the procedure set out in regulation 13C.

(7) Where the Agency has granted the derogation application, the holding to which the derogation applies shall be designated by the Agency as a derogated holding for the calendar year in respect of which the application was made.

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

(9) 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(b); and
- (b) “European site” means a European site within the meaning of regulation 10 (meaning of European site) of the Conservation (Natural Habitats, &c.) Regulations 1994.

### **Deemed derogation**

**13B.**—(1) Where 70% or more of a holding’s agricultural area is sown with grass during the 2009 calendar year the holding is deemed to be a derogated holding for that calendar year.

(2) An occupier of a holding deemed to be a derogated holding under paragraph (1) who has applied livestock manure to the holding above the 170kg limit in Regulation 12(1) must record the percentage of the holding’s agricultural area sown with grass during 2009.

### **Appeal against refusal of a derogation application**

**13C.**—(1) Where the Agency has refused a derogation application, the applicant may by notice appeal the decision to an independent panel appointed by the Secretary of State for the purpose of these Regulations (“the derogation application appeals panel”).

(2) An appeal against a refusal of a derogation application must be submitted within 30 days beginning on the day after the date of the refusal.

(3) The Secretary of State must publish the manner and form in which an appeal must be made.

### **Proceedings of the derogation application appeals panel**

**13D.**—(1) The derogation application appeals panel must consist of an odd number of persons, not being less than 3 persons, and make its decision by a simple majority.

(2) The derogation application appeals panel must consider the appeal and determine whether or not to allow the appeal.

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(a) S.I. 1994/2716.

(b) S.I. 2007/1842.

(3) The derogation application appeals panel must arrive at its decision based on documentation submitted to it by the appellant and the Agency, unless it decides that it needs additional information to form a judgement, in which case it may—

- (a) request the appellant, or the Agency, to provide additional material; and
- (b) in exceptional circumstances may convene an oral hearing.

(4) At an oral hearing the appellant and the Agency have the right to appear.

(5) All parties must bear their own costs.

#### **Effect of derogation application appeals panel findings**

**13E.**—(1) If the derogation application appeals panel allows the appeal, the holding to which the derogation application applies must be designated by the Agency as a derogated holding for that calendar year.

(2) The derogation application appeals panel must—

- (a) notify the Agency, the applicant and the Secretary of State, as soon as reasonably practicable, of its findings; and
- (b) where the appeal is refused, give reasons for the refusal.

#### **Derogated holdings**

**13F.** Schedule 4 has effect in relation to derogated holdings.”.

#### **Amendment of Part 4**

**6.**—(1) Part 4 (Crop requirements) is amended as follows.

(2) For paragraph (3) of regulation 15 (additional information to be recorded during the year), substitute—

“(3) Before spreading manufactured nitrogen fertiliser, the occupier must record—

- (a) the amount required; and
- (b) the planned date for spreading (month).”.

(3) In regulation 16 (total nitrogen spread on a holding)—

(a) for paragraph (a), substitute—

“(a) nitrogen from manufactured nitrogen fertiliser, and”;

(b) for paragraph (b), substitute—

“(b) nitrogen available for crop uptake from livestock manure in the growing season in which it is spread, calculated in accordance with regulation 17,”;

(c) after “spread on the following crops” omit “, calculated in accordance with regulation 17,”; and

(d) for table footnote (e), substitute—

“(e) This is inclusive of any nitrogen that is applied as an exemption to the closed period for manufactured nitrogen fertiliser. The permitted amount may be increased by up to 30 kg per hectare for every half tonne that expected yield exceeds the standard yield.”.

#### **Amendment of Part 5**

**7.**—(1) Part 5 (Controlling the spreading of nitrogen fertiliser) is amended as follows.

(2) For regulation 20 (spreading manufactured fertiliser near surface water), substitute—

**“Spreading manufactured nitrogen fertiliser near surface water**

20. No person may spread manufactured nitrogen fertiliser within 2 metres of surface water.”.

(3) For regulation 22 (controlling how nitrogen fertiliser is spread), substitute—

**“Controlling how nitrogen fertiliser is spread**

22.—(1) Subject to paragraph (2), any person spreading slurry must use spreading equipment with a spreading trajectory less than 4 metres from the ground.

(2) Spreading equipment with a spreading trajectory of more than 4 metres from the ground can be used where such equipment can achieve an average slurry application rate of not more than 2 millimetres per hour when it is operating continuously.

(3) Any person spreading nitrogen fertiliser must do so in as accurate manner as possible.”.

**Amendment of Part 6**

8.—(1) Part 6 (Closed periods for spreading nitrogen fertiliser) is amended as follows.

(2) For paragraph (a) of regulation 27 (exemptions for organic holdings), substitute—

“(a) crops specified in the table in Schedule 3 (permitted crops for the closed period), or”.

**Amendment of Part 8**

9. In paragraph (2) of regulation 42 (records of spreading nitrogen fertiliser) of Part 8 (Calculations and records), after “manufactured” insert “nitrogen”.

**Amendment to Schedules**

10. For Schedules 1 to 3, substitute the contents of the Schedule to these Regulations.

**Amendment of the Conservation (Natural Habitats, & c.) Regulations 1994**

11.—(1) The Conservation (Natural Habitats & c.) Regulations 1994(a) are amended as follows.

(2) After regulation 84C (marine works), insert—

**“Derogations under the Nitrate Pollution Prevention Regulations 2008**

84D.—(1) Regulations 48 (assessment of implications for European site) and 49 (considerations of overriding public interest) apply in relation to the granting of a derogation under Part 3A of the Nitrate Pollution Prevention Regulations 2008(b).

(2) Where regulations 48 and 49 apply, the competent authority may, if they consider any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.”.

2nd December 2009

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

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(a) S.I. 1994/2716.  
(b) S.I. 2008/2349.

SCHEDULE

Regulation 10

“SCHEDULE 1

Regulations 6 and 38

Amount of manure, nitrogen and phosphate produced by grazing livestock and non-grazing livestock

**Table 1**

**Grazing livestock**

<i>Category</i>	<i>Daily manure produced by each animal (litres)</i>	<i>Daily nitrogen produced by each animal (grams)</i>	<i>Daily phosphate produced by each animal (grams)</i>
<b>Cattle</b>			
Calf (all categories except veal) up to 3 months:	7	23	12.7
Dairy cow—			
From 3 months and less than 13 months:	20	95	34
From 13 months up to first calf:	40	167	69
After first calf and—			
annual milk yield more than 9000 litres:	64	315	142
annual milk yield between 6000 and 9000 litres:	53	276	121
annual milk yield less than 6000 litres:	42	211	93
Beef cows or steers <sup>(6)</sup> —			
From 3 months and less than 13 months:	20	91	33
From 13 months and less than 25 months:	26	137	43
From 25 months—			

<i>Category</i>	<i>Daily manure produced by each animal (litres)</i>	<i>Daily nitrogen produced by each animal (grams)</i>	<i>Daily phosphate produced by each animal (grams)</i>
females or steers for slaughter:	32	137	60
females for breeding— weighing 500kg or less:	32	167	65
weighing more than 500kg:	45	227	86
<b>Bulls</b>			
Non-breeding, 3 months and over:	26	148	24
Breeding—			
from 3 months and less than 25 months:	26	137	43
from 25 months:	26	132	60
<b>Sheep</b>			
From 6 months up to 9 months old:	1.8	5.5	0.76
From 9 months old to first lambing, first tugging or slaughter:	1.8	3.9	2.1
After lambing or tugging <sup>(b)</sup> —			
weight less than 60kg:	3.3	21	8.8
weight from 60kg:	5	33	10.0
<b>Goat, deer and horses</b>			
Goat:	3.5	41	18.8
Deer—			
breeding:	5	42	17.6
other:	3.5	33	11.7
Horse:	24	58	56

<sup>(a)</sup> Castrated male.

<sup>(b)</sup> In the case of a ewe, this figure includes one or more suckled lambs until the lambs are aged six months.



**Table 2**

**Non-grazing livestock**

<i>Category</i>	<i>Daily manure produced by each animal (litres)</i>	<i>Daily nitrogen produced by each animal (grams)</i>	<i>Daily phosphate produced by each animal (grams)</i>
<b>Cattle</b>			
Veal calf:	7	23	12.7
<b>Poultry<sup>(a)</sup></b>			
Chicken used for production of eggs for human consumption—			
less than 17 weeks:	0.04	0.64	0.47
from 17 weeks (caged):	0.12	1.13	1.0
from 17 weeks (not caged):	0.12	1.5	1.1
Chickens raised for meat:	0.06	1.06	0.72
Chickens raised for breeding—			
less than 25 weeks:	0.04	0.86	0.78
from 25 weeks:	0.12	2.02	1.5
Turkey—			
male:	0.16	3.74	3.1
female:	0.12	2.83	2.3
Duck:	0.10	2.48	2.4
Ostrich:	1.6	3.83	18.5
<b>Pigs</b>			
Weight from 7kg and less than 13kg:	1.3	4.1	1.3
Weight from 13kg and less than 31kg:	2	14.2	6.0
Weight from 31kg and less than 66kg—			
dry fed:	3.7	24	12.1
liquid fed:	7.1	24	12.1
Weight from 66kg and—			
intended for slaughter—			

<i>Category</i>	<i>Daily manure produced by each animal (litres)</i>	<i>Daily nitrogen produced by each animal (grams)</i>	<i>Daily phosphate produced by each animal (grams)</i>
dry fed:	5.1	33	17.9
liquid fed:	10	33	17.9
sow intended for breeding that has not yet had its first litter:	5.6	38	20
sow (including litter up to 7kg) fed on a diet supplemented with synthetic amino acids:	10.9	44	37
sow (including litter up to 7kg) fed on a diet without synthetic amino acids:	10.9	49	37
breeding boar from 66kg up to 150kg:	5.1	33	17.9
breeding boar, from 150kg:	8.7	48	28

<sup>(a)</sup> Note: all figures for poultry include litter.

## SCHEDULE 2

Regulation 17

### Calculating nitrogen in manure

#### PART 1

##### Standard table

##### **Total amount of nitrogen in manure**

<i>Manure other than slurry</i>	<i>Total nitrogen in each tonne (kg)</i>
<i>Manure other than slurry from—</i>	
cattle:	6
pigs:	7
sheep:	7
ducks:	6.5
horses:	7
goats:	6
Manure from laying hens:	19
Manure from turkeys or broiler chickens:	30
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<i>Slurry</i>	<i>Total nitrogen in each cubic metre (kg)</i>
Cattle:	2.6
Pigs:	3.6
<i>Separated cattle slurry (liquid fraction)—</i>	
strainer box:	1.5
weeping wall:	2
mechanical separator:	3
Separated cattle slurry (solid fraction):	4
Separated pig slurry (liquid fraction):	3.6
Separated pig slurry (solid fraction):	5
Dirty water:	0.5

#### PART 2

##### Sampling and analysis

##### **Slurry**

- 1.—(1) In relation to slurry, at least five samples, each of 2 litres, must be taken.
- (2) The sample must be taken from a slurry vessel, and—
  - (a) if reasonably practicable, the slurry must be thoroughly mixed before the samples are taken, and
  - (b) each sample must be taken from a different location.
- (3) But if a tanker used for spreading is fitted with a suitable valve, the samples may be taken while spreading, and each sample must be taken at intervals during the spreading.
- (4) The samples must be poured into a larger container, stirred thoroughly and a 2 litre sample must be taken from that container and poured into a smaller clean container.
- (5) That sample must then be sent for analysis.

## **Solid manures**

- 2.—(1) In relation to solid manures, the samples must be taken from a manure heap.
- (2) At least ten samples of 1kg each must be taken, each from a different location in a heap.
- (3) Each sub-sample must be taken at least 0.5 metres from the surface of the heap.
- (4) If samples are being collected to calculate compliance with the whole farm limit for pigs and poultry, four samples for analysis must be taken in a calendar year (one taken in each quarter) from manure heaps not more than 12 months old.
- (5) The sub-samples must be placed on a clean, dry tray or sheet.
- (6) Any lumps must be broken up and the sub-samples must be thoroughly mixed together.
- (7) A representative sample of at least 2kg must then be sent for analysis.

## SCHEDULE 3

Regulations 27 and 29

### Permitted crops for the closed period

<i>Crop</i>	<i>Maximum nitrogen rate (kg/hectare)</i>
Oilseed rape, winter <sup>(a)</sup>	30
Asparagus	50
Brassica <sup>(b)</sup>	100
Grass <sup>(a) (c)</sup>	80
Over-wintered salad onions	40
Parsley	40
Bulb onions	40

<sup>(a)</sup> Nitrogen must not be spread on these crops after 31st October.

<sup>(b)</sup> An additional 50kg of nitrogen per hectare may be spread every four weeks during the closed period up to the date of harvest.

<sup>(c)</sup> A maximum of 40kg of nitrogen per hectare may be spread at any one time.

## SCHEDULE 4

Regulation 13F

### Derogated holdings

1. The following additional requirements apply to derogated holdings but not to holdings with the benefit of a deemed derogation.

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

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

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

where—

*A* is the area of the derogated holding (hectares), as existing on 1<sup>st</sup> 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, and

*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**

3.—(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 1st January before the spreading of phosphate fertiliser.

4. In addition to the requirements under paragraph 3 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**

5.—(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 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 before 2010, such sampling and analysis must be carried out as follows—

- (a) 75% of the agricultural area by 1st March 2011, and
- (b) 100% of the agricultural area by 1st March 2012.

### **Additional information to be recorded during the year**

6.—(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 paragraph (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**

7.—(1) In addition to the requirements under regulation 18 (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 1st March for that calendar year.

(2) The occupier must update the risk map within one month of any change in circumstances.

### **Maintaining the derogated holding as a grassland holding**

8. The occupier must maintain the holding to ensure 80% or more of the agricultural area is sown with grass during that calendar year.

### **Closed period for ploughing grass on the derogated holding**

9. In relation to any grass ploughed on or after 1st January 2010, no person may—
- (a) plough temporary grassland on sandy soils between 1st July and 31st December;
  - (b) plough grass on sandy soils before 16th January where livestock manure has been spread on that grass between 1st September and 31st December in the previous calendar year; and
  - (c) plough grass on soils that are not sandy soils before 16th January where livestock manure has been spread on that grass between 15th October in the previous calendar year and 15th January.

### **Sowing of crops following grass on the derogated holding**

10. In relation to the sowing of crops or grass on any grass ploughed on or after 1st January 2010, 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**

11. Crop rotation must not include leguminous or other plants fixing atmospheric nitrogen except for grass with less than 50% clover and other leguminous plants that are under-sown with grass.

### **Recording the size of the derogated holding**

- 12.—(1) An occupier must record the total agricultural area and the area of grass within the derogated holding by 1st March for that calendar year.
- (2) If the size of the derogated holding or area of grass 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**

13. In addition to the requirements of regulation 36 (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 1st March for that calendar year.

### **Record of nitrogen and phosphate produced by animals**

- 14.—(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 holding during that calendar year.
- (2) Following the record making requirements in 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 paragraphs (1) and (2) must be made before 1st March for that calendar year.

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

- 15.—(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 that calendar year; and
- (b) calculate and record the amount of nitrogen in the livestock manure recorded under paragraph (a) in accordance with regulation 39(4).

(2) The records to be made under paragraph (1) must be made by 1st March for that calendar year.

### **Records of crops sown**

**16.** In addition to the requirements of regulation 41(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**

**17.** In addition to the requirements of regulation 42 (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**

**18.** In addition to the requirements of regulation 43 (subsequent records) an occupier must record within one week of ploughing, the date of that ploughing.

### **Fertilisation accounts**

**19.—(1)** An occupier, or any person on behalf of the occupier, must submit fertilisation accounts for the calendar year to the Agency by 30th April of the following year.

(2) The Agency 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 and type of livestock manure brought on to or sent off the derogated holding during the previous calendar year;
- (f) the amount of nitrogen and phosphate in the manure recorded under paragraph (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 1st January and 31st December in the previous calendar year; and
- (h) the weight (tonnes) and nitrogen content of all manufactured nitrogen fertiliser brought on to and sent off the derogated holding between 1st January and 31st December in the previous calendar year.”

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Nitrate Pollution Prevention Regulations 2008 (S.I. 2008/2349) (“the Nitrate Regulations”) and the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) (“the Habitats Regulations”).

They implement in England Commission Decision 2009/431/EC (OJ No L 141, 6.6.09, p48) 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(2) amends regulation 3 (coming into force) to extend the coming into force date of the manure storage requirements and the prohibition on high trajectory spreading equipment for those holdings identified on maps deposited at the offices of the Secretary of State as being within an area marked as a NVZ deferred slurry storage area.

Regulation 5 inserts a new Part 3A which introduces a procedure by which an application for a derogation must be made, conditions under which a deemed derogation shall be granted for 2009 and establishes an appeal procedure against refusal of a derogation application.

Regulation 7 allows the use of spreading equipment with a spreading trajectory of more than 4 metres from the ground to be used in certain circumstances.

Regulation 10 replaces Schedules 1 to 3 and inserts a new Schedule 4 which sets out additional requirements to be met by an occupier of a derogated holding.

Regulation 11 inserts new regulation 84D into the Habitats Regulations requiring the effect on a European site to be considered before granting a derogation and, subject to certain exceptions, restrict the grant of a derogation where the integrity of the European site would be adversely affected.

A transposition note setting out how the amendments transpose the provisions of the Commission Decision and a full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.go.uk](http://www.opsi.go.uk)).

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STATUTORY INSTRUMENTS

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