STATUTORY INSTRUMENTS

2018 No. 151

AGRICULTURE, ENGLAND
WATER, ENGLAND

The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018

Made - - - -	*5th February 2018*
Laid before Parliament	*7th February 2018*
Coming into force - -	*2nd April 2018*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ("the 1972 Act")(**1**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(**2**).

Citation, commencement, extent and application

1. These Regulations—

(a) may be cited as the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018,

(b) come into force on 2nd April 2018,

(c) extend to England and Wales, and

(d) apply to agricultural land in England.

Interpretation

2.—(1) In these Regulations—

"the Agency" means the Environment Agency;

"agricultural diffuse pollution" means the transportation of agricultural pollutants into inland freshwaters or coastal waters, or into a spring, well or borehole, where—

(a) the transportation occurs by means of soil erosion or leaching, and

(**1**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(**2**) S.I. 2008/301.

(b) the agricultural pollutants may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems;

"agricultural land" means land used for agriculture for the purposes of a trade or business;

"coastal waters" has the meaning given in section 104 of the Water Resources Act 1991(**3**);

"inland freshwaters" has the meaning given in section 104 of the Water Resources Act 1991;

"land manager" means any person who has custody or control of agricultural land;

"livestock" means cattle, sheep, goats, deer, horses, poultry or pigs;

"livestock manure" means excreta from livestock or a mixture of litter and excreta from livestock, including in processed form;

"manufactured fertiliser" means fertiliser made by an industrial process;

"organic manure" means fertiliser derived from one or more animal, plant or human source, including—

(a) anaerobic digestates and liquors,

(b) ash from meat, poultry litter or biomass,

(c) bone meal,

(d) livestock manure,

(e) paper crumble,

(f) silage effluent,

(g) sludge, and

(h) slurry;

"poaching" means the trampling or treading of agricultural land by livestock resulting in a layer of compacted soil with overlying mud;

"precision spreading equipment" includes—

(a) a trailing hose spreader or a trailing shoe spreader,

(b) a shallow injector which injects organic manure no deeper than 10 centimetres below the surface, and

(c) a dribble bar applicator;

"slurry" means liquid or semi-liquid matter with a consistency enabling it to be pumped or to be discharged by gravity, which is composed of—

(a) excreta produced by livestock while in a yard or building (including that held in wood chip corrals), or

(b) a mixture of livestock excreta, livestock bedding, rainwater and washings from a yard or building used by livestock.

(2) References in these Regulations to "application" in relation to organic manure or manufactured fertiliser—

(a) include—

(i) spreading on the surface of the land,

(ii) injection into the land, and

(iii) mixing with the surface layers of the soil, and

(**3**) 1991 c. 57. Section 104(1) was modified by S.I. 1996/3001, 1997/1331 and 1997/1332. The functions of the Secretary of State under section 104 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by S.I. 1999/672, article 2; see the entry in Schedule 1 for the Water Resources Act.

(b) do not include the direct deposit of excreta onto land by livestock.

(3) In this regulation—

"agricultural pollutants" means—

(a) soil,

(b) sediment, or

(c) any substance found in soil, sediment, organic manure or manufactured fertiliser which, as a result of human activity, is directly or indirectly introduced to agricultural land, including—

(i) faecal organisms (from animal excreta),

(ii) magnesium,

(iii) nitrogen,

(iv) phosphorus,

(v) potassium, and

(vi) sulphur;

"agriculture" includes—

(a) horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping,

(b) the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and

(c) the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

"anaerobic digestate" means a product of anaerobic digestion, other than from sewage or material in a landfill, which has a consistency enabling it to be pumped or to be discharged by gravity;

"anaerobic digestion" means the mesophilic and thermophilic biological decomposition and stabilisation of biodegradable waste which—

(a) is carried on under controlled anaerobic conditions,

(b) produces a methane-rich gas mixture, and

(c) results in stable sanitised material that can be applied to land for the benefit of agriculture or to improve the soil structure or nutrients in land;

"leaching" means the process by which agricultural pollutants are washed or drained from soil into inland freshwaters or coastal waters, or into a spring, well or borehole, by rainwater or other liquid applied to agricultural land;

"sludge" means residual sludge from—

(a) septic tanks and other similar installations for the treatment of sewage, or

(b) sewage plants treating—

(i) domestic or urban waste waters, and

(ii) waste waters of a composition similar to domestic and urban waste waters;

"soil erosion" means soil loss caused by—

(a) soil runoff or degradation over a single area of agricultural land (whether or not crossing permanent boundary features) of at least 1 hectare, or

(b) poaching adjacent to inland freshwaters or coastal waters over a single stretch of agricultural land (whether or not crossing permanent boundary features) which is at least 2 metres wide and 20 metres long;

"soil runoff" means the transportation of agricultural pollutants into inland freshwaters or coastal waters, or into a spring, well or borehole, by rainwater or other water running over the soil surface.

Circumstances in which applying organic manure and manufactured fertiliser is prohibited

3. A land manager must ensure that organic manure or manufactured fertiliser is not applied to agricultural land if—

(a) the soil is waterlogged, flooded or snow covered, or

(b) the soil has been frozen for more than 12 hours in the previous 24 hours.

Applying organic manure and manufactured fertiliser to agricultural land

4.—(1) A land manager must ensure that, for each application of organic manure or manufactured fertiliser to agricultural land, the application—

(a) is planned so that it does not—

(i) exceed the needs of the soil and crop on that land, or

(ii) give rise to a significant risk of agricultural diffuse pollution, and

(b) takes into account the weather conditions and forecasts for that land at the time of the application.

(2) When planning under paragraph (1)(a)(ii), the land manager must ensure that any factors which mean there would be a significant risk of agricultural diffuse pollution from the application are taken into account, including—

(a) the slope of the land, in particular if greater than 12 degrees,

(b) any ground cover,

(c) proximity of the land to inland freshwaters, coastal waters, wetlands, or to a spring, well or borehole,

(d) the soil type and condition of the land, and

(e) the presence and condition of any agricultural land drains.

(3) In addition to paragraphs (1) and (2), the land manager must ensure that reasonable precautions are taken to prevent agricultural diffuse pollution resulting from applications.

(4) Without limiting what may otherwise be done to comply with paragraph (3), examples of reasonable precautions include—

(a) checking spreading equipment for leaks and correct calibration,

(b) incorporating organic manure and manufactured fertiliser into the soil within 12 hours of, or as soon as possible after, its application, and

(c) checking the organic matter content in, and moisture levels of, the soil.

(5) In this regulation—

"spreading equipment" means any machinery used for the application of organic manure or manufactured fertiliser to agricultural land and includes precision spreading equipment;

"wetlands" means land that is covered with or saturated by water permanently or for a significant part of the year.

Applying organic manure and manufactured fertiliser to cultivated agricultural land

5.—(1) When planning an application under regulation 4(1)(a) to cultivated agricultural land, a land manager must ensure that the results of soil sampling and analysis are taken into account.

(2) The results of the soil sampling and analysis—

(a) must include the pH of the soil and the levels of nitrogen, phosphorous, magnesium and potassium present,

(b) must be no more than 5 years old at the time of the application, and

(c) may have been collected before the date on which these Regulations come into force, including by another land manager.

(3) For the purpose of paragraph (2)(a), nitrogen levels may be determined by means of assessment of the soil nitrogen supply, rather than the sampling and analysis of soil.

(4) In this regulation, "cultivated agricultural land" means agricultural land which has been cultivated—

(a) by physical means (including ploughing, sowing or harvesting) at least once in the previous year, or

(b) by chemical means (including the application of organic manure or manufactured fertiliser) at least once in the previous 3 years.

Applying manufactured fertiliser near inland freshwaters or coastal waters, or near a spring, well or borehole

6. A land manager must ensure that manufactured fertiliser is not applied to agricultural land within two metres of inland freshwaters or coastal waters, or of a spring, well or borehole.

Applying organic manure near inland freshwaters or coastal waters

7.—(1) A land manager must ensure that organic manure is not applied to agricultural land within 10 metres of inland freshwaters or coastal waters.

(2) Paragraph (1) does not apply where—

(a) the application is made using precision spreading equipment, in which case the land manager must ensure that the manure is not applied within 6 metres of inland freshwaters or coastal waters, or

(b) the application is of livestock manure (other than slurry or poultry manure), and—

(i) the land is—

(aa) managed for breeding wader birds or as a species-rich semi-natural grassland, and

(bb) subject to an agri-environmental commitment or has been notified as a site of special scientific interest under the Wildlife and Countryside Act 1981(**4**),

(ii) the manure is applied in the period beginning on 1st June and ending on 31st October,

(iii) the manure is not applied directly onto the surface of the inland freshwaters or coastal waters, and

(iv) the total annual amount of manure applied does not exceed 12.5 tonnes per hectare.

(3) In paragraph (2)(b)(i)(bb), "agri-environmental commitment" means any commitment entered into under Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development(**5**) or Regulation (EU) No. 1305/2013 of

(**4**) 1981 c. 69.

(**5**) OJ No L 277, 21.10.2005, p 1. This was repealed by Regulation (EU) No. 1305/2013 but commitments entered into under it remain in force by virtue of Article 88 of that Regulation.

the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development(**6**).

Applying organic manure near a spring, well or borehole

8. A land manager must ensure that organic manure is not applied to agricultural land within 50 metres of a spring, well or borehole.

Storing organic manure

9.—(1) A land manager must ensure that organic manure is not stored on agricultural land—

(a) within 10 metres of inland freshwaters or coastal waters, or

(b) within 50 metres of a spring, well or borehole.

(2) For agricultural land to which paragraph (1) does not apply, the land manager must ensure that any factors which mean there would be a significant risk of agricultural diffuse pollution are taken into account when deciding where to store organic manure.

(3) In paragraph (2), the factors include those in regulation 4(2).

Managing livestock and soil

10.—(1) A land manager must ensure that poaching is prevented within 5 metres of inland freshwaters or coastal waters.

(2) The land manager must ensure that a livestock feeder is not positioned on agricultural land—

(a) within 10 metres of inland freshwaters or coastal waters, or

(b) within 50 metres of a spring, well or borehole.

(3) For agricultural land to which paragraph (2) does not apply, the land manager must ensure that any factors which mean there would be a significant risk of agricultural diffuse pollution are taken into account when deciding where to locate a livestock feeder.

(4) In paragraph (3), the factors include those in regulation 4(2).

(5) In addition to paragraphs (1) to (3), the land manager must ensure that reasonable precautions are taken to prevent agricultural diffuse pollution resulting from land management and cultivation practices on agricultural land.

(6) Without limiting what may otherwise be done to comply with paragraph (5), examples of reasonable precautions include—

(a) in relation to soil—

(i) establishing crops early in autumn months, and during dry conditions,

(ii) planting headland rows and beds across the base of any sloping land,

(iii) undersowing or sowing a cover crop to stabilise soil after harvest,

(iv) breaking up compacted soil, and

(v) establishing grass buffer strips in valleys, along contours or slopes, field edges or gateways, and

(b) in relation to livestock—

(i) moving livestock regularly,

(ii) erecting fencing around inland freshwaters or coastal waters, and

(**6**) OJ No L 347, 20.12.2013, p 487, as last amended by Regulation (EU) No. 2017/825 of the European Parliament and of the Council (OJ No L 129, 19.5.2017, p 1).

(iii) wintering livestock on well-drained, level fields.

(7) In paragraph (5), "land management and cultivation practices" includes—

(a) creating farm tracks on, or gateways to, the land,

(b) establishing seedbeds, polytunnels or tramlines,

(c) cleaning out ditches,

(d) installing drainage or irrigation, and

(e) irrigating crops or spraying them with pesticides, herbicides or fungicides.

Offence and penalty

11.—(1) A person who fails to comply with the requirements of any of regulations 3 to 10 commits an offence.

(2) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

(3) Where a body corporate is guilty of an offence under this regulation, and the offence is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to have been attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In paragraph (3), "officer" means—

(a) a director, manager, secretary or other similar officer of the body, or

(b) a person purporting to act in any such capacity.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

Defence of due diligence

12.—(1) In any proceedings against any person for an offence under regulation 11(1), it is a defence for that person ("P") to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

(a) served a notice in accordance with paragraph (3), or

(b) obtained the leave of the court.

(3) The notice must—

(a) give any information in P's possession which identifies or assists in identifying the person who—

(i) committed the act or default, or

(ii) supplied the information on which P relied, and

(b) be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

(a) to the steps P took, and those which might reasonably have been taken, for the purpose of verifying the information, and

(b) to whether P had any reason to disbelieve the information.

(5) In this regulation, "third party allegation" means an allegation that the commission of the offence was due—

(a) to the act or default of another person, or

(b) to reliance on information supplied by another person.

Civil Sanctions

13.—(1) In relation to an offence under regulation 11(1), the Agency may impose a restoration notice, compliance notice, stop notice, fixed monetary penalty, variable monetary penalty or accept an enforcement undertaking, as if it were an offence in relation to which the sanction in question was specified in Schedule 5 to the Environmental Civil Sanctions (England) Order 2010(**7**).

(2) An expression used in paragraph (1) and in that Order has the same meaning in that paragraph as it has in that Order.

(3) The provisions of that Order relating to the sanctions in paragraph (1) apply as if they were provisions of these Regulations.

Enforcement

14. The Agency has the function of enforcing these Regulations.

Guidance to the Agency

15.—(1) The Secretary of State may issue guidance to the Agency with respect to the exercise of the Agency's functions under these Regulations.

(2) In the exercise of its functions, the Agency must have regard to any guidance issued under paragraph (1).

(3) The Secretary of State must publish any guidance issued under paragraph (1) on a website maintained by or on behalf of the Secretary of State(**8**).

Review

16.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations, and

(b) publish a report setting out conclusions of the review.

(2) The first report must be published before 2nd April 2021.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**9**) ("the 2015 Act") requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Article 11(3)(h) of Directive 2000/60/EC of the European Parliament and of the Council

(**7**) S.I. 2010/1157, as amended by S.I. 2015/664.

(**8**) Any guidance published online can also be obtained in hardcopy by writing to the Water Quality Division, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

(**9**) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

establishing a framework for Community action in the field of water policy(**10**) is implemented in other member States.

(5) Section 30(4) of the 2015 Act requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the 2015 Act (see section 32 of that Act).

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

5th February 2018

(**10**) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out provisions to reduce and prevent the pollution of waters from diffuse agricultural sources and apply to persons who have custody or control of agricultural land in England ("land managers").

These Regulations implement, along with other existing measures, Article 11(3)(h) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.2000, p 1), which requires Member States to implement basic measures to prevent or control the input of pollutants from diffuse sources.

Regulations 3 to 8 set out provisions on the application of organic manure and manufactured fertiliser to agricultural land. This includes a requirement to take into account factors that indicate a significant risk of agricultural diffuse pollution. For cultivated land only, the results of soil sampling and analysis must also be taken into account.

Regulation 9 imposes restrictions on the storage of organic manure and regulation 10 establishes requirements for the management of livestock and soil.

Regulations 4 and 10 also require land managers to take reasonable precautions to prevent agricultural diffuse pollution. Illustrative lists of reasonable precautions are provided.

Regulations 11 to 14 provide that failure to comply with these Regulations is an offence punishable by a fine on summary conviction or on conviction on indictment. The Environment Agency, the body which has the function of enforcing these Regulations, can also impose civil sanctions pursuant to provisions in the Environmental Civil Sanctions (England) Order 2010 (S.I. 2010/1157).

Regulation 15 gives the Secretary of State the power to issue guidance to the Environment Agency on how it should exercise its functions under these Regulations. The Environment Agency must have regard to any such guidance when exercising its functions under these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.