

## **EXPLANATORY MEMORANDUM TO**

### **The Nitrates Action Programme Regulations (Northern Ireland) 2010**

#### **SR 2010 No. 411**

#### **Introduction**

1. This Explanatory Memorandum has been prepared by the Department of the Environment and the Department of Agriculture and Rural Development (the Departments) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
2. The Statutory Rule is made under Article 32 of the Waste and Contaminated Land (Northern Ireland) Order 1997 and section 2(2) of the European Communities Act 1972 and is subject to the negative resolution process.

#### **Purpose**

3. The Statutory Rule implements an action programme for the period 1 January 2011 to 31 December 2014 under Council Directive of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (91/676/EEC) (the Nitrates Directive). The Statutory Rule also implements Commission Decision 2007/863/EC (as amended) allowing derogation from the 170 kg of nitrogen per hectare per year (kg N/ha/year) limit on the application of livestock manures. The Nitrates Action Programme Regulations (Northern Ireland) 2006 (2006 NAP Regulations), which previously transpose the Nitrates Directive, are revoked.

#### **Background**

4. The Nitrates Directive aims to improve water quality by protecting water against pollution caused by nitrates from agricultural sources. In particular, it is about promoting better management of livestock manures, chemical nitrogen fertilisers and other nitrogen-containing materials spread onto land.
5. The Nitrates Directive allows Member States to either designate discrete areas of land as Nitrate Vulnerable Zones or establish an action programme to be applied to the whole territory. Action programmes require farmers to observe rules to reduce nitrate pollution, and must include measures concerning livestock manure storage, application of organic and chemical nitrogen fertiliser to land and limits on the amount of organic and chemical nitrogen applied to land. In addition, action programmes established under the Nitrates Directive are a basic measure within River Basin Management Plans, thus contributing to the implementation of the Water Framework Directive (2000/60/EC).
6. The 2006 NAP Regulations set out an action programme applying to all farms across Northern Ireland from 1 January 2007. The Nitrates Directive also requires Members States to review and, where necessary, revise their action programmes,

including additional measures, at least every four years. The 2006 NAP Regulations were, therefore, reviewed and revised by 31 December 2010.

7. Following the introduction of the 2006 NAP Regulations, the Departments also successfully applied for a Derogation allowing farmers who meet certain criteria to apply up to 250kg N/ha/year from grazing livestock manures. The European Commission Decision granting the Derogation expires on 31 December 2010 and, due to its importance to intensive grassland farms in Northern Ireland, an application was made to renew it.

## **Consultation**

8. Following completion of a scientific review incorporating stakeholder views and initial engagement with the European Commission, the Departments jointly published a consultation paper on 4 June 2010 on proposals to introduce the Nitrates Action Programme Regulations (Northern Ireland) 2010 (2010 NAP Regulations), and revoke the 2006 NAP Regulations. The full text of the consultation paper is available on the Departments' websites at: [www.doeni.gov.uk](http://www.doeni.gov.uk) and [www.dardni.gov.uk](http://www.dardni.gov.uk).
9. Comments were invited on the proposals made and issues raised (including a partial Regulatory Impact Assessment (pRIA)) in the consultation document. The consultation proposed that the measures in the 2006 NAP Regulations should be carried forward into the Nitrates Action Programme Regulations (Northern Ireland) 2010 (2010 NAP Regulations) with the exception a number of revisions
10. The Departments invited responses from a range of organisations and individuals including MPs, MLAs, local councils, farming and business organisations, environmental NGOs, academic and professional institutions, and other government departments and agencies. Over 500 organisations and individuals were contacted directly. The consultation paper was also published on the Departments' websites and publicised through press notices and articles in the farming press.
11. The consultation period ran from 4 June 2010 to 13 August 2010. Late responses were accepted up to 25 August 2010. A total of 28 responses to the consultation were received of which 5 provided nil comment and 22 provided substantive comment. The proposal to carry forward the measures in the 2006 NAP Regulations into the 2010 NAP Regulations was broadly welcomed by respondents to the consultation. There were, however, a significant number of comments concerning the detail and extent of the proposed revisions.
12. All comments made during the consultation process were carefully considered by the Departments before making the recommendations for the 2010 NAP Regulations. A synopsis of responses received was considered by the Northern Ireland Assembly Agriculture and Rural Development Committee and the Northern Ireland Assembly Environment Committee at their meetings of 9 and 11 November 2010 respectively. Members of both Northern Ireland Assembly Committees indicated that they were content for the Departments to proceed with the policy.

13. As the Regulations are the joint responsibility of the Department of Agriculture and Rural Development and the Department of the Environment a request for consent to make the Regulations was also referred to the Executive.

#### **Equality Impact Assessment**

14. The Regulations do not have any impact on any of the relevant groups as defined in Section 75 of the Northern Ireland Act 1998.

#### **Regulatory Impact Assessment**

15. A pRIA was completed in June 2010 and updated for the final Regulatory Impact Assessment. The Departments' final recommendations have less financial implications for farmers than those outlined in the preferred option in the pRIA in the consultation document. However, some additional costs to farm businesses in Northern Ireland are still likely to arise from implementation of the 2010 NAP Regulations. It is estimated that the total cost to the agricultural industry is likely to range from £0.18m per year to £0.37 m per year. It is not anticipated that the proposed Regulations will impact any other sector.

#### **Financial Implications**

16. The Regulations do not encompass all the revisions originally consulted on and, therefore, have less financial implications for farmers whilst still providing adequate environmental protection.
17. The costs of not amending the 2006 NAP Regulations were potentially significant. In particular failure to renew the Derogation Decision would have resulted in an estimated cost to the agricultural industry of up to £31.6m per annum.

#### **Section 24 of the Northern Ireland Act 1998**

18. The Rule does not discriminate on the grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or other statutory provisions listed in section 7 of the 1998 Act.

#### **EU Implications**

19. The Regulations fulfil the obligation under European Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ No. L375, 31.12.1991, p1).

#### **Parity or Replicatory Measure**

20. In England, Scotland and Wales new action programmes were introduced in 2008. A Derogation Decision was granted to England and Scotland by the European Commission, with Regulations taking effect from December 2009 and January 2010 respectively.

**Additional Information**

21. Not applicable.