

STATUTORY INSTRUMENTS

2015 No. 668

The Nitrate Pollution Prevention Regulations 2015

PART 8

Derogation

Application

36.—(1) The occupier of a holding may apply to the Agency for a derogation in a case where 80% or more of the agricultural area of the holding is sown with grass.

(2) “Derogation” means a derogation granted under this Part from the limit on 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 to Council [Directive 91/676/EEC](#).

[^{F1}(2A) For the purposes of paragraph (2), paragraph 2(b) of Annex 3 to Council [Directive 91/676/EEC](#) is to be read as if the third subparagraph were omitted.]

(3) The reference in paragraph (1) to the agricultural area does not include a reference to any land which is covered by a greenhouse.

[^{F2}(4) A derogation granted under this regulation ceases to have effect unless the occupier to whom the derogation is granted has sent to the Agency a written declaration that the conditions set out in Schedule 3 (“the derogation conditions”) will be met in relation to the holding.

(4A) The written declaration must be sent to the Agency within 28 calendar days of the derogation being granted.]

(5) The application must be submitted between 1st October and 31st December in the calendar year preceding that to which the application relates.

[^{F3}(5A) But an application relating to the calendar year commencing on 1st January 2017 may be submitted by 20th March 2017.]

(6) The application must be made in the form and manner published by the Secretary of State.

[^{F4}(7) As part of the review conducted under regulation 39, the Secretary of State must review the overall position of derogations granted under this regulation against—

- (a) objective criteria, including—
 - (i) the existence, in designated nitrate vulnerable zones, of long growing seasons, crops with high nitrogen uptake, and soils with exceptionally high denitrification capacity;
 - (ii) the net rainfall in designated nitrate vulnerable zones;
- (b) the following objectives—
 - (i) reducing water pollution caused or induced by nitrates from agricultural sources;
 - (ii) preventing further such pollution.]

F1 [Reg. 36\(2A\)](#) inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), [16\(4\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)

- F2** Reg. 36(4)(4A) substituted for reg. 36(4) (31.12.2016) by The Nitrate Pollution Prevention (Amendment) Regulations 2016 (S.I. 2016/1190), regs. 1(1), **8(a)**
- F3** Reg. 36(5A) inserted (31.12.2016) by The Nitrate Pollution Prevention (Amendment) Regulations 2016 (S.I. 2016/1190), regs. 1(1), **8(b)**
- F4** Reg. 36(7) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **16(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Determination of application

- 37.—**(1) The Agency must determine an application under regulation 36 as soon as practicable.
- (2) Having determined the application, the Agency must—
- (a) notify the applicant in writing of its determination, and
 - (b) if it has refused the application, give the reasons for its refusal.
- (3) If the Agency grants the application, it must designate the holding in question as a derogated holding for the calendar year to which the application relates; and, accordingly, the occupier must meet the derogation conditions in relation to the holding.
- (4) The occupier must keep a record of the application and determination.
- (5) The Agency must refuse the application if it considers that granting the derogation would have an adverse effect on the integrity of a European site or European offshore marine site, where that site has been subject to an appropriate assessment under [^{F5}regulation 63 of the Conservation of Habitats and Species Regulations 2017] .
- (6) In paragraph (5)—
- “European site” has the meaning given by regulation 8 of those Regulations, and
- [^{F6}“European offshore marine site” has the meaning given by regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017.]
- (7) The Agency 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.
- (8) 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 Agency may, taking into account the seriousness of the breach, grant or refuse the application.
- (9) 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 Agency 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.
- (10) Where the Agency 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 36 by or on behalf of the occupier.
- (11) 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 41 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,

- (c) a penalty or notice has been imposed under regulation 42 in relation to such an offence and either no further appeal may be made against the penalty or notice or, where there was an appeal, it was decided against the person, or
- (d) the person has given the Agency an enforcement undertaking under that regulation in relation to such an offence.

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| <p>F5 Words in reg. 37(5) substituted (30.11.2017) by The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), reg. 1(2), Sch. 6 para. 53</p> <p>F6 Words in reg. 37(6) substituted (30.11.2017) by The Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013), reg. 1, Sch. 4 para. 17(2) (with regs. 3, 4(2))</p> |
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Appeal

38.—(1) Where the Agency refuses an application under regulation 36, the occupier may by notice appeal against the refusal to an independent panel appointed by the Secretary of State 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.

(3) An appeal under this regulation must be made in the form and manner published by the Secretary of State.

(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 Agency, and
- (c) such additional information from the appellant or the Agency as it considers necessary.

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

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

(8) If the panel allows an appeal under this regulation, the Agency 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 Agency, the appellant and the Secretary of State 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.

Changes to legislation:

There are currently no known outstanding effects for the The Nitrate Pollution Prevention Regulations 2015, PART 8.