
STATUTORY INSTRUMENTS

2009 No. 3160

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

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⁽¹⁾.

(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(2); 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.

(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.”.