
STATUTORY INSTRUMENTS

2015 No. 668

The Nitrate Pollution Prevention Regulations 2015

PART 8

Derogation

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 regulation 61 of the Conservation of Habitats and Species Regulations 2010⁽¹⁾.
- (6) In paragraph (5)—
- “European site” has the meaning given by regulation 8 of those Regulations, and
 - “European offshore marine site” has the meaning given by regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007⁽²⁾.
- (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.

(1) [S.I. 2010/490](#). Relevant amendments were made by [S.I. 2012/1927](#).

(2) [S.I. 2007/1842](#). A relevant amendment was made by [S.I. 2012/1928](#).

(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.