
WELSH STATUTORY INSTRUMENTS

2015 No. 2020

**The Nitrate Pollution Prevention
(Wales) (Amendment) Regulations 2015**

Title, application and commencement

1. The title of these Regulations is the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015, they apply in relation to Wales and they come into force on 8 January 2016.

Amendments to the Nitrate Pollution Prevention (Wales) Regulations 2013

2. The Nitrate Pollution Prevention (Wales) Regulations 2013(1) are amended in accordance with regulations 3 to 7.

Amendment of regulation 6 (interpretation)

- 3.—(1) In regulation 6 (interpretation) in the appropriate place in alphabetical order insert—
- ““derogated holding” (“*daliad a randdirymwyd*”) means a holding over which a derogation has effect”;
 - ““derogation” (“*rhanddirymiad*”) means a derogation granted under Part 3A from the limit of 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 of Council Directive [91/676/EEC](#) and Commission Decision 2013/781/EU(2)
 - ““derogation application” (“*cais i randdirymu*”) means an application for a derogation”;
- (2) in the definition “fertilisation plan” after the words “regulation 14 (1) (c)” insert—
- “or other similar plans required under Schedule 5.”.

Amendment of regulation 12 (application of livestock manure – total nitrogen limit for the whole holding)

4.—(1) At the beginning of paragraph (1) of regulation 12 (application of livestock manure – total nitrogen limit for the whole holding) insert “Except where the occupier has been granted a derogation,”.

Insertion of new Part 3A

5. After Part 3 (Limiting the application of organic manure), insert—

(1) [S.I. 2013/2506 \(W. 245\)](#).

(2) [OJ No L 346, 20.12.2013, p 65](#).

“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 Natural Resources Body for Wales for a derogation where 80% or more of the agricultural area is sown with grass.

(2) An application under this regulation must be accompanied by a written declaration that the occupier will meet the conditions set out in Schedule 5.

(3) A derogation application must be submitted by 31 December in the calendar year preceding that in respect of which the application is made.

(4) The Welsh Ministers must publish the manner and form in which the application must be made.

(5) The Natural Resources Body for Wales must grant or refuse a derogation application as soon as practicable and notify the applicant of the decision in writing and, where the Natural Resources Body for Wales refuses a derogation application, it must give reasons for the refusal at the same time.

(6) The Natural Resources Body for Wales 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 61 of the Conservation of Habitats and Species Regulations 2010(3).

(7) Where the Natural Resources Body for Wales has refused to grant the derogation application, the applicant may appeal in accordance with the procedure set out in regulation 13B.

(8) The Natural Resources Body for Wales 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.

(9) 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 Natural Resources Body for Wales may, taking into account the seriousness of the breach, grant or refuse the application.

(10) 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 Natural Resources Body for Wales 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.

(11) Where the Natural Resources Body for Wales 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 13A by or on behalf of the occupier.

(12) 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 49 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.

(13) Where the Natural Resources Body for Wales has granted the derogation application, the holding to which the derogation applies must be designated by the Natural Resources Body for Wales as a derogated holding for the calendar year in respect of which the application was made.

(14) The occupier must keep a record of the derogation application and decision.

(15) 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(4); and
- (b) “European site” has the meaning given by regulation 8 of the Conservation of Habitats and Species Regulations 2010.

Appeal against refusal of a derogation application

13B.—(1) Where the Natural Resources Body for Wales has refused a derogation application, the applicant may by notice appeal against the refusal to an independent panel appointed by the Welsh Ministers 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 Welsh Ministers.

(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 Natural Resources Body for Wales; and
- (c) such additional information from the appellant or the Natural Resources Body for Wales as it considers necessary.

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

- (a) request the appellant or the Natural Resources Body for Wales to provide the additional information; or
- (b) in exceptional circumstances, convene an oral hearing at which the appellant and the Natural Resources Body for Wales may appear.

(8) If the panel allows an appeal under this regulation, the Natural Resources Body for Wales 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 Natural Resources Body for Wales, the appellant and the Welsh Ministers 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.

Derogated holdings

13C. Schedule 5 has effect in relation to derogated holdings.”.

Insertion of new Schedule 5

6. After Schedule 4 (Permitted Crops for the Closed Period), insert the contents of the Schedule to these Regulations.

Amendment of the Conservation of Habitats and Species Regulations 2010

7. In regulation 101(1)(b) of the Conservation of Habitats and Species Regulations 2010 (**5**) for “2008” substitute “2013”.

11 December 2015

Rebecca Evans
Deputy Minister for Farming and Food, one of
the Welsh Ministers