



STATUTORY INSTRUMENTS.

S.I. No. 393 of 2022

EUROPEAN UNION (GOOD AGRICULTURAL PRACTICE FOR
PROTECTION OF WATERS) (AMENDMENT) REGULATIONS 2022

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I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 91/676/EEC of 12 December 1991¹, Directive 2000/60/EC of 23 October 2000², Directive 2003/35/EC of 26 May 2003³, Directive 2006/118/EC of 12 December 2006⁴ and Directive 2008/98/EC of 19 November 2008⁵ hereby make the following regulations:

PART 1 PRELIMINARY

Citation, commencement and application

1. These Regulations may be cited as the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022.

Interpretation

2. In these Regulations :

- (i) "Commission Decision" means the Commission Implementing Decision of 29 April 2022 on granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources;
- (ii) "The 2022 Regulations" means the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2022 (S.I. No. 113 of 2022).

Amendment of 2022 Regulations

Article 4 is amended by deleting the interpretation of 'ploughing' and inserting the following:

'ploughing' means inversion of soil to a depth of 15 – 30cm and excludes shallow cultivation;

Under Article 4, the following definitions are inserted:

¹ O.J. No. L 375/1, 31 December 1991.

² O.J. No. L 327/1, 22 December 2000.

³ O.J. No. L 156/17, 25 June 2003.

⁴ O.J. No. L 372/19, 27 December 2006.

⁵ O.J. No. L 312/3, 22 November 2008.

‘fertilisation plan’ means an advance calculation about the planned use and availability of nutrients;

‘fertilisation account’ means the nutrient balance based on the real use and uptake of nutrients;

‘grassland farms’ means holdings where 80 % or more of the agricultural area available for manure application is grass;

‘heavy rain’ means rainfall meeting the criteria for yellow, orange or red rainfall warnings issued by Met Eireann;

‘intersecting watercourse’ means where a land parcel is sloped towards a watercourse and any surface water run-off would drain into that watercourse

‘late harvested crops’ includes vegetable crops harvested after 15th September as well as fodder beet, sugar beet, main crop potatoes and maize excluding cereal crops and beans;

‘parcel’ means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;

‘shallow cultivation’ means any soil disturbance increasing soil–seed contact that will promote seed germination;

‘soil consolidation’ means rolling soil to increase soil–seed contact and promote seed germination.

3. The following Article 7 (2) is substituted for Article 7 (2) of the 2022 Regulations:

“Storage facilities being provided on a holding on or after 31st March 2009 shall -

- (a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of a substance specified in sub-article (1), and
- (b) comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.”

4. The following Article 9 is substituted for Article 9 of the 2022 Regulations:

“Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of –

- (a) effluent produced by ensiled forage and other crops shall equal or exceed the capacity specified in Table 5 of Schedule 2,
- (b) soiled water shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 10 days if the soiled water storage facilities were constructed

- before 1 January 2015,
- (c) soiled water shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 15 days if the soiled water storage facilities were constructed on or after 1 January 2015, and
 - (d) From 1st December 2023, for all milk producers a minimum of 21 days soiled water storage capacity shall be in place on the holding and from 1st December 2024, for all milk producers a minimum of 31 days storage capacity shall be in place on the holding except for winter/liquid milk producers where this storage must be in place by 1st December 2025.”

5. The following Article 15 (6) is substituted for Article 15 (6) of the 2022 Regulations:

“On holdings with grassland stocking rates of 130 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding, a maximum crude protein content of 15% is permissible in concentrate feedstuff fed to dairy cows and other bovines two years old and over between 15th April and 30th September. Records of crude protein content of concentrate feedstuff shall be kept in accordance with Article 23 (1)(j).”

6. The following Article 16 (3)(a) is substituted for Article 16 (3)(a) of the 2022 Regulations:

“For the purposes of this article, the phosphorous index for soil shall be deemed to be phosphorous index 3 unless a soil test indicates a different phosphorous index is appropriate or the soil is subject to paragraph (f).”

7. The following Article 16 (3)(f) is substituted for Article 16 (3)(f) of the 2022 Regulations:

“All occupiers of holdings that have a grassland stocking rate of 170 kg nitrogen per hectare or above prior to export of livestock manure, shall take soil tests and shall assume P index 4 until soil tests are taken. From 1st January 2023 all occupiers of holdings with a grassland stocking rate above 130 kg nitrogen per hectare shall take soil tests and shall assume P index 4 until soil tests are taken. From 1st January 2023 all occupiers of holdings on all arable land shall take soil tests and shall assume P index 4 until soil tests are taken.”

8. The following Article 17 (22) is substituted for Article 17 (22) of the 2022 Regulations:

“For late harvested crops, a minimum uncultivated buffer of 6m shall be put in place to protect any intersecting watercourses.”

9. The following Article 21 (5) is substituted for Article 21 (5) of the 2022 Regulations:

“Where green cover is provided for in compliance with this Article, the cover shall not be removed by ploughing or by the use of a non-selective herbicide before 1st December unless a crop is sown within two weeks of its removal subject to sub-article 7”

10. The following Article 21 (7) is substituted for Article 21 (7) of the 2022 Regulations:

“Shallow cultivation or sowing of a crop must take place within 10 days of baling of straw post harvest. Where straw is chopped shallow cultivation or sowing a crop must take place within 10 days of harvest. In all circumstances, shallow cultivation or sowing of a crop must take place within 14 days of harvesting. In certain weather conditions, the Minister, in discussion with the Minister for Agriculture, Food and the Marine, may advise when this should not apply.

Soil consolidation as an alternative to shallow cultivation may apply in situations following oilseed rape or where the Land Parcel Identification System (LPIS) parcel, or part thereof, has been certified by a Farm Advisory System (FAS) approved advisor as containing certain grass weeds (*Bromus hordeaceus*, *Bromus commutatas*, *Bromus secalinus* or *Alopecurus myosuroides*). If soil consolidation is practiced as an alternative to shallow cultivation it must take place within the times set out in the first sub-paragraph above.

In counties Carlow, Cork, Dublin, Kildare, Kilkenny, Laois, Louth, Meath, Offaly, Tipperary, Waterford, Westmeath, Wexford and Wicklow shallow cultivation or sowing of a crop must take place within 10 days of baling straw post-harvest.

A minimum of 20% and a maximum of 25% of cereal land on each holding shall not be subject to shallow cultivation post-harvest. Unless a crop has subsequently been established, this land shall not be subject to the use of any herbicides until at least February 1st in the following year. If the cereal area includes land where water flowing over the land surface can enter a watercourse this area should be prioritised for inclusion within the cereal area that is not subject to shallow cultivation post-harvest.

(8) Article 21, sub-article 7 shall not apply in the following cases:

- i. Where the farmer is certified in accordance with Regulation (EU) 2018/848.
- ii. Where root crops or late harvested crops have been harvested.
- iii. Where a cereal crop or beans have been harvested after 15th September or where a cereal crop has been undersown with another crop.
- iv. Where a winter cereal crop, oilseed rape or beans is due to be sown on the land by the 31st October.

- v. Where the land is destined for use by the National Ploughing Association later that year or in the first two months of the following year and the farmer has documentary evidence to support this.”

(9) As part of the interim review referred to in Article 28(1) the effectiveness of the provisions under sub-articles 7 and 8 in reducing nitrogen inputs to water bodies and in contributing to the protection of relevant wild bird species, as provided for in Directive 2009/147/EC, will be reviewed. Where necessary, amendments to sub-article 7 and 8 will be proposed for the purpose of optimising both the protection of water and relevant wild bird species.”

11. The following Article 23 (1)(f) is substituted for Article 23 (1)(f) of the 2022 Regulations:

“Quantities and types of chemical fertilisers, including lime where applicable, moved on to or off the holding, including opening stock, records of purchase and closing stock,”

12. The following Table 7 is substituted for Table 7 of the 2022 Regulations:

Table 7 Amount of nutrient contained in 1m³ of slurry

Livestock type	Total Nitrogen (kg)	Total Phosphorus (kg)
Cattle	2.4	0.5
Pig	4.2	0.8
Sheep	10.2	1.5
Poultry — layers 30% DM	13.7	2.9

For the purposes of calculation, assume that 1 m³ = 1,000 litres = 1 tonne.

13. Table 9 of the 2022 Regulations is amended by inserting a footnote after Table 9:

“For peat soils and/or soils with more than 20% organic matter, the nutrient availability of fertilisers is 50% with a maximum of P index 3 permitted.”

14. The following Table 11 is substituted for Table 11 of the 2022 Regulations:

Table 11 Phosphorus index system

Soil Index	phosphorus	Soil phosphorus ranges (mg/l)	
		Grassland	Other crops
1		0.00-3.04	0.00-3.04
2		3.05-5.04	3.05-6.04
3		5.05-8.00	6.05-10.00
4		> 8.01	>10.01

15. The following Schedule 4 (2)(b) is substituted for Schedule 4 (2)(b) of the 2022 Regulations:

“8th October¹¹ to 15th January in the case of the application of organic fertiliser (other than farmyard manure) and not withstanding sub-paragraph (5)”

16. The following Schedule 4 (3)(b) is substituted for Schedule 4 (3)(b) of the 2022 Regulations:

“8th October¹¹ to 15th January in the case of the application of organic fertiliser (other than farmyard manure) and not withstanding sub-paragraph (5)”

17. The 2022 Regulations are amended by the insertion of the following after Part 6:

“Part 7

Implementation of Commission Decision

34. The Minister for Agriculture, Food and the Marine shall be the competent authority for the purposes of verifying compliance with a derogation granted under the Commission Decision.

35. (1) The application to land, on a holding in any year of livestock manure in excess of the amount specified in Article 20(1) shall be deemed not to be a contravention of that sub-article where all of the following conditions are met—

- (a) the occupier of the holding has made application in respect of that year to the Minister for Agriculture, Food and the Marine for authorisation of a derogation from the requirements of that sub-article;

- (b) the application under paragraph (a) is duly completed in the form and on or before the date specified for the time being by that Minister;
- (c) the application under paragraph (a) is accompanied by an undertaking in writing by the occupier to comply with all the conditions specified in Schedule 5, and
- (d) all the conditions set out in Schedule 5 are met by the occupier in relation to the holding.

(2) Where an application is made to the Minister for Agriculture, Food and the Marine in accordance with this Article that Minister shall consider the application and, where that Minister considers that the application does not comply with the conditions therein, he or she shall issue a notice of refusal to the occupier.

(3) Where it is established, in any year, that a grassland farm covered by an authorisation does not fulfil the conditions set out in Articles 6 to 9 of the Commission Decision, the holding shall not be eligible for an authorisation the following year.

36. The Minister for Agriculture, Food and the Marine shall carry out, or arrange for the carrying out of, such monitoring, controls and reporting as are necessary for the purposes of Articles 10, 11 and 13 of the Commission Decision.

37. The Agency shall prepare annually a report of the results of water quality monitoring carried out by local authorities for the purposes of Article 10(4) of the Commission Decision and, where appropriate and as agreed from time to time between the Agency and the Minister for Agriculture, Food and the Marine, shall assist that Minister in compiling water quality data for reporting in accordance with the requirements of the Commission Decision.

38. The Agency shall submit, by 30 June 2023, the assessment described in Article 10 of the Commission Decision, corresponding to the year 2022, an annex containing the results of monitoring as regards the nitrates concentrations of groundwater and surface waters and the trophic status of surface water bodies as outlined in Article 12 (1) and (2) of the Commission Decision.

39. In accordance with the requirements of Article 12 (3) and (4) of the Commission Decision the Minister for Agriculture, Food and the Marine, shall assist the Minister in informing the Commission, by 30 September 2023, of the outcomes of this two-year review, and in particular on the areas and farms with an authorisation where the maximum amount of manure to be applied is 220 kg nitrogen/ha per year and of the additional measures to be applied within the Nitrates Action Programme.

40. The Agency shall make such recommendations and give such directions to a local authority in relation to the monitoring of water quality as it considers appropriate and/or necessary for the purposes of the Commission Decision.

18. The 2022 Regulations are amended by the insertion of the following Schedule 5 after Schedule 4:

“Schedule 5

Conditions applying in relation to Derogation

The following are the conditions for the purposes of Article 35 (1) of these Regulations in relation to the application to land on a holding in any year of livestock manure in excess of the amount specified in Article 20(1):

Application of manure and other fertilisers

1. The amount of livestock manure from grazing livestock applied to the land each year on grassland farms, including by the animals themselves, shall not exceed the amount of manure containing 250 kg nitrogen per hectare per year, subject to the conditions laid down in paragraphs 2 to 6 of this Article. From 2024, as a consequence of the two-year review, this maximum amount shall not exceed 220 kg nitrogen per hectare per year in the areas referred to in Article 12 of the Commission Decision.
2. The total nitrogen inputs shall neither exceed the foreseeable nutrient demand of each crop nor the maximum fertilisation rate applicable to grassland farms as established in the Nitrates Action Programme, and shall take into account the supply from the soil. Total nitrogen application shall be differentiated on the basis of the stocking rate and grassland productivity.
3. A fertilisation plan shall be prepared and kept for each grassland farm. The fertilisation plan shall describe the crop rotation of the farmland and the planned application of manure and other fertilisers. That plan shall be available on the grassland farm for each calendar year, before 1 March of that year. That plan shall include at least the following:
 - (a) the crop rotation plan specifying the following:
 - (i) the acreage of parcels with grass;
 - (ii) the acreage of parcels with crops other than grass;
 - (iii) a sketch map indicating the location of individual parcels;
 - (b) the number of livestock on the grassland farm;
 - (c) a description of the housing and manure storage system, including the volume of manure storage available;
 - (d) a calculation of the manure nitrogen and phosphorus produced on the grassland farm;
 - (e) the amount, type and characteristics of manure delivered outside the grassland farm or to the grassland farm;

- (f) the foreseeable nitrogen and phosphorus crop requirements for each parcel;
- (g) results of soil analysis related to nitrogen and phosphorus soil status if available;
- (h) the nature of the fertiliser to be used;
- (i) a calculation of nitrogen and phosphorus application from manure for each parcel;
- (j) a calculation of nitrogen and phosphorus application from chemical and other fertilisers for each parcel.

The fertilisation plan shall be revised no later than seven days following any change in agricultural practices at the grassland farm.

4. Fertilisation accounts, including information related to the management of lime, nitrogen and phosphorus inputs and the management of soiled water, shall be prepared and kept for each grassland farm. For the calendar year 2022 they shall be submitted to the competent authority by 31 March 2023. For the calendar years 2023 onwards they shall be submitted by 31 January of the following calendar year.
5. Information related to manure transferred off the holding shall be submitted to the competent authority by 31 October each year.
6. Livestock manure shall not be spread in the autumn before grass cultivation.
7. At least 50 % of slurry produced on the grassland farm shall be applied by 15 June.

Land management

8. Farmers who wish to plough grassland shall do so between 1 March and 31 May
9. Ploughed grass on all soil types shall be followed by a crop with high nitrogen demand immediately and no later than three weeks after ploughing grass.
10. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. This shall, however, not apply to clover in grassland with less than 50 % clover and to other leguminous plants that are undersown with grass.

11. All new grass reseeds on the grassland farm shall incorporate at least 1.5 kg/ha of naked clover seed or at least 2.5 kg/ha of pelleted clover.
12. Hedgerows on the holding shall be managed in accordance with guidance issued under Article 22(2) and management practices shall include, as a minimum, the following:
 - (a) one mature whitethorn/ blackthorn tree shall be retained in each hedgerow;
 - (b) hedgerows shall be maintained on a minimum 3-year cutting cycle.

Training

13. Evidence of participation in an approved training programme in nutrient use efficiency and the protection of water should be retained when making any repeat application under Article 36 (1)(a).



GIVEN under the Official Seal of the Minister for Housing,
Local Government and Heritage,
28 July, 2022.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations amend the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022. The purpose of the amendment is to give effect to the Commission Implementing Decision of 29 April 2022 on granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. In addition Article 21 has been amended to provide clarification and to ensure some uncultivated land is retained to support seed eating birds over the winter. They also make minor amendments to Articles 7, 9, 15, 16, 17 and 23, Schedule 4 and Table 7, 9 and 11 of the 2022 Regulations.

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