



**An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta**
Department of Housing,
Local Government and Heritage

FOURTH REVIEW OF IRELAND'S NITRATES ACTION PROGRAMME

STAGE 1 PUBLIC CONSULTATION PAPER

November 2020

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Introduction

This consultation paper is issued jointly by the Department of Housing, Local Government & Heritage (DHLGH) and the Department of Agriculture, Food and the Marine (DAFM). Both Departments invite views and comments on initial proposals for the review of Ireland's Nitrates Action Programme.

The public consultation commences on 23 November 2020 and the closing date for receipt of submissions is 15th January 2021 (8 weeks).

To get involved in the consultation, please email your response to:

wau@housing.gov.ie

Postal responses should be sent to:

**Nitrates Consultation
Water Advisory Unit,
Department of Housing, Local Government and Heritage
Custom House,
Dublin 1**

Any queries can be sent to the address above or telephone 01 8882000.

Further copies of the consultation paper and associated documents are available in electronic and hard-copy format on request to the section named above. The papers can also be accessed through the websites www.housing.gov.ie or www.agriculture.gov.ie

Publication of Submissions

All submissions and comments submitted to the Department for this purpose are subject to release under the Freedom of Information (FOI) Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007- 2014. Submissions are also subject to Data Protection legislation.

Personal, confidential or commercially sensitive information should not be included in your submission and it will be presumed that all information contained in your submission is releasable under the Freedom of Information Act 2014.

A privacy statement has also been published which details how the Department of Housing, Local Government & Heritage (DHLGH) and Department of Agriculture, Food and the Marine (DAFM) will manage your personal data as part of this consultation process, in accordance with the GDPR Regulations.

The Nitrates Directive

The Nitrates Directive (91/676/EEC) – *Council Directive of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources* – was adopted in 1991 and has the objective of reducing water pollution caused by nitrates from agricultural sources and preventing further such pollution, with the primary emphasis on the management of livestock manures and other fertilisers.

The Nitrates Directive requires Member States to –

- Monitor waters and identify waters which are polluted or are liable to pollution by nitrates from agriculture.
- Identify the area or areas to which an action programme should be applied to protect water from pollution from nitrates from agricultural sources. Ireland has adopted a whole national territory approach in this regard.
- Develop and implement an action programme to reduce and prevent such pollution. This action programme must be implemented and updated on a four-year cycle. Ireland's current action programme runs until the end of 2021.
- Monitor the effectiveness of the action programmes, and
- Report to the EU Commission on progress.

Purpose of this consultation document

In accordance with the Directive, Ireland's Nitrates Action Programme (NAP), which is currently given effect by the European Union (Good Agricultural Practice for the Protection of Water) Regulations 2017, as amended, must be reviewed by the end of 2021. This will lead to the implementation of a new NAP, covering the period 2022 to 2025, inclusive. The purpose of this consultation document is as follows:

- To set out the draft timetable and work programme to produce the next NAP;
- To set out the potential issues to be considered as part of the review;
- To highlight milestones in the review cycle where further consultation will take place; and
- To invite interested parties to make submissions on the above.

This consultation also forms the starting point for delivering on the following commitments in the Programme for Government:

- *Review the effects of the nitrates derogation on water quality, in conjunction with the EPA, which will inform future policy in this area.*
- *Work with nitrates derogation farmers to improve environmental outcomes on their farms, ensuring the sustainable use of the derogation, in line with our environmental objectives.*

As per the timetable published in this consultation document, a second round of public consultation will be undertaken in 2021 to further build on the submissions received, and allow interested parties a second chance to engage with the process.

Attached at Appendix 1, 2, 3, 4 & 5 to this document is a full copy of the 2017 Regulations and a copy of the amendments carried out to these Regulations in 2018 and 2020.

Scope of the Review

This will be Ireland's fifth Nitrates Action Programme. The current Programme contains the mandatory measures required of all Member States by the Nitrates Directive, including closed periods that prohibit the spreading of fertilisers, limits on the amount of livestock manure that may be land-spread, conditions during which fertilisers may not be spread and livestock manure storage capacity requirements. As these are fundamental elements of the Directive, the scope for change in relation to them is limited.

This consultation paper contains some of the potential issues to be considered as part of the next NAP review. These issues are based on:

- Input from the members of the Nitrates Expert Group,
- An assessment of the public consultation undertaken as part of the last NAP review and the Nitrates Derogation review in 2019,
- Existing NAP requirements that may need to be re-examined.

Overall Context

Ireland's next Nitrates Action Plan will be developed in the context of significant greater environmental ambition in the Programme for Government and at EU level. Key elements of this include:

Better policy alignment:

It is becoming clearer that there needs to be greater alignment between different environmental protection policies at a National and European level. In particular Farm 2 Fork and the EU Biodiversity strategy for 2030 have set ambitious targets for the agricultural sector.

In Ireland, the links between water quality plans and programmes, biodiversity strategies and climate adaptation plans needs to be developed to ensure we are achieving multiple benefits for as many implementation measures as possible.

There are natural links between the measures required to protect each of these areas and it is the role of policy-makers and stakeholders to ensure these links are strengthened as much as possible.

Climate Action Measures:

The recently published Climate Adaptation Plan for agriculture sets out high-level objectives for achieving Ireland's significant climate-related targets. These have not been translated into measures on the ground and the review of the NAP is an opportune time to look at implementing measures that can have multiple benefits for water quality and climate mitigation (as well as biodiversity).

A significant amount of research has been undertaken by Teagasc and others, looking at mitigation measures for agriculture to reduce GHG emissions and promote more sustainable farming practices. Some of this research could be adopted into measures in the next NAP as part of a roadmap for achieving Ireland's climate targets.

Biodiversity Measures:

A cornerstone of the National Biodiversity Action Plan 2017-2021 is to bring biodiversity into mainstream policy-making decisions and ensure that our biodiversity targets are met and that we can introduce biodiversity targets for individual sectors.

Agriculture, being the dominant land use, has the greatest potential to impact, both positively and negatively, on biodiversity in Ireland. While primarily a water protection tool, the Nitrates Action Programme could potentially introduce measures that provide positive benefits for water quality and biodiversity.

Nitrates derogation:

The impact of the derogation limits for livestock and chemical manure will be examined. The condensed nature of derogation farms in some of the more vulnerable catchments is a concern.

Detailed issues to be considered

The Table below sets out a number of detailed issues to be considered. It should be noted that this is not an exhaustive list and other issues can be raised in submissions.

| CURRENT REQUIREMENTS |
|---|
| <p>Cattle access to watercourses:</p> <p>The current regulations prevent cattle access to watercourses, effective from 1st January 2021, on farms with a grassland stocking rate of 170 kg N/ha or above. The measure requires water courses to be fenced 1.5 metres from the top of the river bank or water's edge as the case may be.</p> <p>Should the current requirements of farms be extended and if so, to what extent?</p> |
| <p>Phosphorous Build-up:</p> <p>The provision allowing for P build-up on farms with stocking rates of 130 kg N/ha or above was introduced in the most recent review of the Nitrates Action Programme. It allows for landowners to introduce higher levels of Phosphorous onto lands with a Phosphorous Index of 1 or 2 in order to optimise soil productivity.</p> <p>An assessment of the uptake and effectiveness of this measure will be undertaken as part of this review of the Nitrates Action Programme to determine if it should be removed, retained or expanded in the next NAP.</p> |
| <p>Record Keeping:</p> <p>Management, maintenance and submission of records is becoming a more important element of demonstrating compliance with the GAP regulations. At present all farmers are required to maintain up to date paper records and failure to produce these records during an inspection can lead to significant penalties for farmers.</p> <p>A more streamlined process may be required to ensure more farmers are able to manage their records and free up additional time for farm advisers, whose time is often taken up with record-keeping on behalf of farmers. In addition the need for a regime similar to that for pesticides where sales are recorded on a farm by farm basis will be considered.</p> |
| <p>Training (for farmers and advisers):</p> <p>Knowledge transfer, both from adviser to farmer and peer-to-peer, has clear benefits in sharing best practices and helping to develop farmer's knowledge of the requirements of the GAP regulations. It also provides farmers with a better understanding of environmental protection in general and the impacts poor farming practices can have on local watercourses.</p> |

A requirement to participate in training programmes specified by DAFM is included for farmers engaging in P build-up, and, from January 2020 for any farmer wishing to avail of a derogation.

Do you think increased requirements to participate in training courses or knowledge transfer events for all farmers would have an impact on Water Quality?

LESS slurry spreading:

Low Emission Slurry Spreading (LESS) has been demonstrated to ensure less nutrients are lost to run off and that atmospheric emissions of Ammonia from slurry-spreading are reduced. This method of slurry spreading is a requirement for all derogation farmers from 2020.

The environmental benefits of LESS methods are well documented. How can these methods be further implemented to improve fertiliser management practices going forward?

Nutrient Management Planning:

Nutrient Management Planning (NMP) is one of the most efficient means of ensuring a farmer maximises the value of their chemical and organic nutrient inputs.

NMP is also a cornerstone of compliance with the derogation requirements. The advent of online nutrient management planning tools in recent years has greatly simplified this task and many farmers that are not in derogation are also using these tools to maximise their nutrient usage.

Mainstreaming the use of these tools will be a key component of any successful NAP and will be linked to the training programmes specified by DAFM.

Assessment of Tables in Schedule 2:

Schedule 2 of the 2017 GAP regulations includes 22 tables that set out various criteria as to storage capacity and nutrient management. These include several tables relating to permitted fertilisation rates, animal excretion rates, slurry storage capacities, etc.

While some of this information was updated or introduced during the last review of the Nitrates Action Programme, a full assessment of the robustness of the information contained in the tables is being considered. This assessment must take account of improvements in scientific knowledge relating to nutrient management, climate change data and climate adaptation measures. Scientific evidence is currently available to demonstrate that the excretion rates for the dairy cow should be updated.

Slurry Storage requirements incl. soiled water:

It has become clear in the past number of years that the slurry storage available on farms is not always sufficient. This is linked to a variety of factors, not least of which is changed rainfall patterns brought about as a result of climate change. Cost of installation of storage infrastructure is also an obvious factor.

Grants are available for installation of additional slurry storage on farms and DAFM always encourage farmers to ensure that they future-proof their storage requirements during design and installation.

The storage periods in Schedule 3 of the GAP regulations will be examined by the Nitrates Expert Group as part of this review of the NAP.

Drinking Water Source Protection:

The protection of drinking water sources is a key element of the GAP Regulations, and the regulations include several measures to protect drinking water sources from contamination by agricultural pollutants and pathogens. These can be caused by poor slurry or chemical fertiliser application practices (i.e. application timing, rates, types) or by applying slurry or fertiliser too close to the water source.

This is an area of the NAP that needs to be strengthened and it also needs to link with ongoing source protection work under the Water Framework Directive and the provisions of the recast Drinking Water Directive, which is expected to be published later in 2020.

POTENTIAL ADDITIONAL REQUIREMENTS

Liming:

The 2020 Good Agricultural Practice (Amendment) Regulations introduced a requirement for farmers availing of a derogation to incorporate a liming programme into their fertilisation plan.

The control of soil pH through application of lime is a common practice on many farms, however, it had not previously been prescribed in the regulations until the recent amendment. The uses and benefits of liming will form part of the discussions around the NAP review and the input of stakeholders will be key to these discussions.

Soils:

Optimising soil fertility to ensure efficient use of nutrient inputs will be a key component of the next review. The proportion of soils tested with levels of soil fertility at the agronomic optimum (pH >6.3, P and K > Index 3) remains low at approximately 18% in 2018.

Balancing both macro- and micro- nutrients to meet optimum soil fertility will be reviewed.

Grazing intensity/zero grazing:

Grazing intensity relative to whole farm stocking will be reviewed. This will be reviewed based on most recent research available.

Zero grazing is a practice being adopted more and more at farm level and a review on best practice for grazing and nutrient management will be undertaken as part of this review.

Exports of livestock manure

Over 4,500 farms export livestock manure to remain compliant with stocking rate limits in the regulations. The impact of these farmers and potential additional controls will be examined. Some additional measures were introduced by the GAP amendment regulations (SI 40 of 2020) however the practice of exporting livestock manure is one which needs a full assessment. The Nitrates Expert Group review of the NAP in 2019 recommended the introduction of further measures for these holdings.

Large herds:

There is an increasing disparity between those with the largest herds in the country and those other farmers that are running average-sized herds.

With the intensity of these large operations having the potential to put significant pressures on the water quality and quantity in their local catchment, should additional measures be considered to address this issue?

Interim Review of the Action Programme:

The existing Nitrates Action Programme (NAP) sets out the requirements for managing agricultural nitrogen and phosphorous for a 4-year period. While a similar period is expected for the next NAP it is proposed to undertake an interim review of the programme nationally towards the end of Year 2 of the programme to assess progress nationally in achieving the objective of reducing pollution from agricultural sources. Where considered necessary for the purpose of achieving this objective amendments to the programme will be proposed.

Compliance with Birds & Habitats Directives:

Compliance with the Birds and Habitats Directives is an integral part of the development of any plan or programme, including reviews of those plans or programmes. While the overall NAP review will be subject to a high-level appropriate assessment, this assessment must be detailed enough to incorporate impacts at a ground level on each individual holding.

One of the main concerns in this regard is the derogation process, and ensuring that derogation from the stocking rate limits of the Nitrates Directive does not result in non-compliance with the Birds and Habitats Directive or the WFD.

Submissions may address any of the issues raised above or may introduce new points for consideration during the NAP review.

Strategic Environmental Assessment (SEA)

Any proposed amendments to the Nitrates Action Programme will be screened to determine whether a Strategic Environmental Assessment is required.

Appropriate Assessment (AA)

A screening for Appropriate Assessment (AA) in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 will also be undertaken as part of this review of the Nitrates Action Programme.

Next Steps

All submissions received by the closing date will be considered by the Nitrates Expert Group, co-chaired by the Department of Housing, Local Government & Heritage and the Department of Agriculture, Food and the Marine, and with representatives from Teagasc and the EPA.

A second round of public consultation will commence in March 2021, in line with the NAP review timetable. The Nitrates Expert Group will assess the additional consultation responses and will advise on the measures that should be included in the next NAP. In addition to this public consultation, the Nitrates Expert Group will be informed by the results of environmental and agricultural research relevant to water quality. These include reports of the Agricultural Catchments Programme, Teagasc research, the EPA's most up-to-date reports on water quality and any environmental assessments of DHLGH or DAFM water-related policies.

Where amendments to the existing NAP are deemed necessary, the current Regulations will be amended subject to consistency with the provisions of the Nitrates Directive. It is anticipated that new regulations will be in place by December 2021, in accordance with the NAP review timetable. These regulations will apply to all farm holdings from 1 January 2022.

NAP Review Timetable

| NAP Element: | Details: | Timeframe: |
|---|--|------------------------------|
| Establishment of Inter-Departmental Nitrates Expert Group | <ul style="list-style-type: none"> - Co-chaired by DHLGH and DAFM - Includes members from Teagasc and the Environmental Protection Agency. - Role is to assess the available evidence, examine all submissions on the NAP review and submits a report to the Ministers outlining their recommendations for the updated NAP. | Establishment Completed |
| Initial Public Consultation | <ul style="list-style-type: none"> - To set out the draft timetable and work programme to produce the next NAP; - To set out the potential issues to be considered as part of the review; - To highlight milestones in the review cycle where further consultation will take place; and - To invite interested parties to make submissions on the above and other relevant issues. | November 2020 – January 2021 |
| Second Public Consultation | <ul style="list-style-type: none"> - Set out an analysis of the initial consultation responses - Establish the priorities for the NAP review - Include potential changes to the NAP under discussion. - Invite submissions on the above. - Incorporates SEA/AA consultation. | March 2021 – April 2021 |
| Publish report on second public consultation | <ul style="list-style-type: none"> - Outline the main themes. - Address the principal concerns. | June 2021 |

| | | |
|-------------------------------------|--|-----------------|
| Agree amendments to NAP at EU level | - Draft NAP presented to European Commission and Member States | June - Nov 2021 |
| Publish new NAP regulations | - Sets out the requirements for managing agricultural Nitrates and Phosphorous for next 4 years. | Dec 2021 |

Appendix 1: 2017 GAP Regulations

Appendix 2: 2018 GAP Amendment Regulations

Appendix 3: 2020 GAP Amendment Regulations

Appendix 4: 2020 GAP Amendment (No. 2) Regulations

Appendix 5: 2020 GAP Amendment (No. 3) Regulations