

# Frequently Asked Questions (FAQ)

## Nitrate Regulation - New Measures effective from 01/01/2021

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## Introduction

SI 605 of 2017 (as amended) effective from the 1<sup>st</sup> of January 2018 gives legal effect to Ireland's 4<sup>th</sup> Nitrates Action Programme (NAP), which is due to expire at the end of 2021.

SI 605 of 2017 introduced new measures, some of which apply to all holdings but some of which apply to certain holdings determined by the stocking rate. These will become effective from 01/01/2021. Some of these measures already apply to nitrates derogation applicants.

A number of other amendments to the Nitrates regulations have been signed into law under **S.I. No. 529 of 2020**. These amendments introduce previously flagged measures for intensively stocked farmers who export slurry to comply with stocking rate limits. Approx 7000 farms apply for derogation annually with another 5000 farmers exceeding the limit of 170kg Organic N/Ha but who export slurry to comply with the limits and avoid applying for derogation. These amendments introduce measures for this cohort (5000) similar to derogation farmers and thereby removing the potential benefits at farm level to avoiding derogation.

Two of these measures are applicable from 1 Jan 2021. These are:

- A requirement to tailor crude protein to an animal's dietary requirements and
- A requirement to apply lime where soil analysis results show an agronomic need.

In addition, from 15<sup>th</sup> April 2021:

- These farmers must use low emission slurry spreading equipment.

A technical amendment has also been made to increase the nitrogen excretion figure for the average dairy cow from 85kg to 89kgs of nitrogen which impacts on all dairy farmers. The purpose of the new on-farm measures is to improve efficiencies and continue to reduce environmental footprint with particular regard to water, climate and air quality. The 'Nitrates Explanatory' handbook which is available on the Department's website will be kept updated to fully reflect the changes. This FAQ answers many of the likely questions arising and will form part of a larger FAQ on Nitrates compliance.

**Note: this FAQ should be read in conjunction with the SI 605 of 2017 (as amended). Nitrates legislation can be viewed at the following links:**

S.I. No. 605 of 2017, the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017

<http://www.irishstatutebook.ie/eli/2017/si/605/made/en/print>

S.I. No. 65 of 2018, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2018

<http://www.irishstatutebook.ie/eli/2018/si/65/made/en/print>

S.I.No.40 of 2020, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2020

<http://www.irishstatutebook.ie/eli/2020/si/40/made/en/print>

S.I No. . 225 of 2020, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment)(No. 2) Regulations 2020

<http://www.irishstatutebook.ie/eli/2020/si/225/made/en/print>

S.I. No. 529 of 2020, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment)(No. 3) Regulations 2020

<http://www.irishstatutebook.ie/eli/2020/si/529/made/en/print>

**The following is applicable to holdings with WFSR (Whole Farm Stocking Rate) stocking rates of  $\geq 170$  kgs N/ha prior to exports**

**Q. What is the stocking rate for the implementation of these measures?**

A. It is based on the WFSR exclusive of exports from the holding as defined in Appendix 1.

**Q. What year's Stocking Rate (SR) will be used to evaluate these measures?**

A. It is based on the previous year's Stocking Rate (SR) for the implementation of these measures, i.e. 2020 SR for 2021.

**Maximum Crude Protein Content Allowance in Concentrate Feedstuff (Article 15.6).**

A maximum crude protein content of 15% is permissible in concentrate feedstuff fed to grazing livestock on the holding between 1 April and 15 September. Records of crude protein content of concentrate feedstuff shall be kept in accordance with Article 23(1)(j).

**Q. Is this requirement only for dairy cows on the holding?**

A. No, this measure is focussed on dairy cows and cattle over two years and does not apply to livestock under two years.

**Q. What will be the level of Crude Protein (CP) allowed in concentrate feeds for grazing livestock at grass?**

A: Bovine livestock greater than two years old, including dairy cows, fed on a 100% grass forage diet during the main grazing season will be required to comply with a maximum of 15% CP (on a fresh weight basis) between 1<sup>st</sup> April and 15<sup>th</sup> September in 2021.

Note: If higher levels of crude protein are required, this needs to be justified and certified by the appropriate advisor.

**Q. Who qualifies as an appropriate advisor for the purpose of this certification?**

A. An appropriate advisor is the compounder, supplier of feed, nutritionist or agricultural advisor

**Q. What records will be required by DAFM**

A: Appropriate feedstuff records shall be maintained for each holding which shall include the quantities and types of concentrated feedstuff fed to grazing livestock on the holding. For 2021, feedstuff records shall be retained (including relevant invoices). All nitrates related records shall be retained on the farm for a period of 5 years.

### **Implementation of a Liming Programme (Article 15.7)**

A liming programme shall be prepared and must establish the following:

- A lime application programme for the farm.
- A calculation of liming requirements for each parcel to achieve optimum pH;

#### **Q. What are the requirements of new the liming programme?**

A: The liming programme must be implemented in 2021, where a current Nutrient Management Plan (NMP) and/or associated soil analysis results are available. The liming programme will be 4 years in duration with a minimum 25% of lime spread in 2021.

#### **Q. Will lime applied prior to 2021 as part of a liming programme be taken into account?**

A. Lime applied prior to 2021 can be included in the requirements for a liming programme provided it was spread post soil analysis. The balance of lime must be spread over the 4-year programme commencing 2021.

#### **Q. How will the purchase and application of lime be verified by the Department of Agriculture, Food and the Marine (DAFM)**

A: Lime application for the entire farm must be recorded and retained on the holding along with the relevant invoices. These shall be submitted upon request by DAFM.

#### **Q. Will land rented by way of a one-year (conacre) agreement be required to be included in the liming programme?**

A: Lands by way of one-year (conacre) agreements don't have to be limed; however, if land is being managed for more than 1 year then it should be included in the liming programme.

#### **Q. Will there be exemptions allowed in areas of high molybdenum or areas of land which are marginal in nature.**

A. On high molybdenum soils the lime requirement should be reduced by 5 tonne/hectare (t/ha). However, this needs to be agreed in advance with a FAS advisor.

#### **Q. What is the minimum specification required for the lime products I use?**

A. Any limestone material must meet the requirements as laid down in S.I. 248 of 1978.

#### **Q. What if I want to use granulated lime?**

A. Granulated lime is fast acting and is generally used in maintenance situations where the pH is good. Granulated lime is usually spread at a rate of 3:1 ground limestone to granulated limestone.

**Use of Low Emission Slurry Spreading Equipment (Article 18.1.b)**

From 15 April 2021, low emission slurry spreading equipment shall be used for the application of slurry on holdings with WFSR stocking rates of 170kgs nitrogen per hectare or above prior to export of livestock manure from the holding. (Note date applicable to derogation farmers is 12 January 2021)

**Q. How will DAFM capture and record the volume of slurry spread by LESS?**

A. Appropriate records shall be maintained for each holding of slurry spread by LESS. Farmers will be required to record the use of LESS and provide details of the volume and evidence of the use of a contractor or own LESS equipment. Records shall be prepared (including relevant invoices) for 2021 by 31 March 2022 and shall be retained on the farm and submitted as requested by the DAFM. (Note deadline for submission applies to Nitrates Derogation Applicants).

**Q. If the holding continues to export slurry off the holding then does the importing holding have to use LESS?**

A. Currently it is the holding with a whole farm stocking rate of  $\geq 170$ kgs N/ha (prior to exporting) that has to comply with this measure.

## **The following is applicable to holdings with grassland stocking rates of $\geq 170$ kgs N/ha**

### **Prevention of water pollution from direct discharge to watercourses.**

**Q. Is the grassland stocking rate after or before exports/imports have been accounted for?**

A. It is the figure prior to adjustment for exports.

**Q. For 2021, is it based on the predicted 2021 GSR or the actual previous years stocking rate.**

A. It is based on the previous year's GSR, - 2020 SR in 2021.

**Q. What is the definition of a watercourse for the purpose of the implementation of the new measures?**

A. Watercourses identified on the 1:5000 scale OSi map will be the watercourses used for the implementation of this measure. Maps of these watercourses are available at [www.osi.ie](http://www.osi.ie) online store/professional products/land and property/place map/customise.

<https://store.osi.ie/index.php/osi-place-map.html> (Scale OSi 1:5,000). All continuous blue lines as identified need to be fenced in 2021.

#### **Exclusion of bovines from watercourses (Article 17.18).**

Where bovine livestock have direct access to water from the holding, a fence shall be placed at least 1.5m from the top of the riverbank or water's edge (as the case may be) by 1 January 2021. It will be permissible to move livestock across a watercourse to an isolated land parcel where necessary, provided that both sides of the watercourse are fenced.

**Q. What is the minimum requirement – permanent post and wire fencing or temporary stake and electric fence?**

A. Either is acceptable as long as it ensures bovines are excluded from the watercourse.

**Q. Are watercourses on land rented by way of a one-year (conacre) agreement required to be fenced?**

A. Lands by way of one-year (conacre) agreements do not have to be permanently fenced but it does need to be temporarily fenced when being grazed by bovines.

**Q. Does tillage land and grassland cut for hay/silage have to comply with this measure?**

A. This action is only applicable to parcels where bovines have access to watercourses associated with that parcel at any time during the calendar year.

**Q. If an existing fence is less than the required 1.5m, does it need to be replaced?**

A. All fences must be at least 1.5m from the watercourse.

**Q. If a natural boundary such as a hedgerow or stonewall exists along the watercourse is there a requirement to erect a fence?**

A. If a watercourse is already stock proofed with a hedgerow or stone wall to a distance of 1.5m from the edge of the watercourse, then there is no requirement for an additional fence.

**Q. Where a farmer has no other access to lands across a river, can access be allowed across the watercourse?**

A. It will be permissible to move livestock across a watercourse to an isolated land parcel where necessary, provided both sides of the access point are fenced to prevent bovine access up or down stream.

**Set-back distance with supplementary drinking points (Article 17.19)**

Supplementary drinking points may not be located within 20m of surface waters from 1 January 2021.

**Q. How are surface waters identified?**

A. Surface waters for the purpose of this measure are watercourses identified on the 1:5000 scale OSi map will be the watercourses used for the implementation of this measure. Maps of these watercourses are available at [www.osi.ie](http://www.osi.ie) online store/professional products/land and property/place map/customise.

<https://store.osi.ie/index.php/osi-place-map.html> (Scale OSi 1:5,000).

**Q. Do drinking troughs have to be 20 m away from all watercourses?**

A. Yes, all water troughs must be 20m away from watercourses as identified from the OSi 1:5000 map.

**Q. What if a parcel of land doesn't allow for a setback distance of 20m?**

A. The water trough should be located the furthest distance possible away from the watercourse.

The following is applicable to all holdings regardless of stocking rate.

## ROADWAYS

### **Prevention of direct discharge from farm roadways - Article 17.20**

*“There shall be no direct runoff of soiled water from farm roadways to waters from 1 January 2021. The occupier of such a holding shall comply with the minimum specification for farm roadways.”* (Current specification S199, July 2020).

#### **Q. What are the minimum specifications for farm roadways?**

A. The minimum requirements are outlined in Specification S199 which is available on DAFM website under ‘Farm Buildings’ webpage.

#### **Q. What is the requirement for new roadways?**

A. In the case of new roadways, a minimum buffer of 1.5m shall be kept between waters and the farm roadway and incorporating a fence 1.5m from the edge of waters. The new road shall be cambered towards the field. Fencing on the opposite side is also a requirement i.e. fencing both sides of the roadway is a requirement

#### **Q. If there is a possibility of direct runoff of soiled water from a roadway to waters, what action is required?**

A. In all cases where there is a possibility of direct runoff of soiled water from a roadway to waters, the relevant sections of roadway shall be cambered/oriented away from waters. This applies even where the roadway is currently flat (with no camber present). **Cambering is a prerequisite for compliance with the regulation (Article 17.20)**. Additional options may subsequently be required so as to comply fully with the regulation.

#### **Q. What is required for compliance with the regulation (Article 17.20)?**

A. Where a roadway needs to be adjusted to render it compliant with the regulation, cambering is a necessity in all cases. This may be sufficient on its own in some cases, but where not, additional options may need to be employed for compliance with the regulation; these options are detailed in the specification S199.

#### **Q. Does run-off have to be directed to a soakaway (cross-fall of passageway is towards waters e.g. stream)?**

A. Where the cross-fall of passageway is towards waters e.g. stream, the cross-fall must be altered to orient it away from waters. A soakaway is one of a number of options available to deal with soiled water in preventing it from entering waters directly from the roadway. In all cases, the cross-fall must be oriented away from waters.

#### **Q. Where a roadway exists alongside waters (e.g. watercourse) is it ok to camber road away from waters and have the earthen bank between the road and waters with a fence erected at field side of roadway?**

A. Yes, but only on the basis that the earthen bank is successful as a stock-proof barrier. If not, a fence is also required on this side of the roadway.



**Q. Do existing roadways, running parallel with waters have to be repositioned to comply with 1.5m buffer rule?**

A. No, however fencing on both sides of the roadway is a requirement.

## **Amendment to 89kgs excretion figure for the dairy cow**

**Q. Why has this figure changed?**

A. Average milk yield has increased significantly since the regulations were originally introduced in 2006. Based on current scientific advice the most accurate figure is 89kgs and this figure is already used by the EPA when reporting for Ireland's Greenhouse gas inventory.

**Q. Will farmers have to cut stock because of this change?**

A. Farmers have a full year to make on farm changes required due to the new figure. These include exporting slurry, reducing young non dairy stock and/or applying for a derogation next Spring.

## **Other Questions**

**Q. What are the penalties for non-compliance with the above measures?**

A. Under cross compliance, payments will normally be reduced by 3% where it has been determined that the beneficiary has acted without due care ('negligence'). However, the reduction could be either 1% or 5% depending on the extent, severity and permanence of the non-compliance. Cross compliance rules also provide for the application of reoccurrence where the same rule has been breached more than once in three consecutive calendar years. Where the same rule is in breach for the second time in this period, the resulting penalty is multiplied by a factor of 3 up to a maximum negligence sanction of 15%. After that, any more instances of non-compliance may be treated as 'intentional'.

For intentional cases, payments will normally be reduced by 20%. This may be reduced to 15%, or increased up to 100% depending on the extent, severity, reoccurrence and permanence of the non-compliance. The sanction of intent may be applied for repeating the same 'negligent' penalty. Equally, an intentional penalty may be applied for breaking a cross compliance rule only once. In some extreme cases, aid may not be paid in the following year.

Nitrate Derogation beneficiaries must comply with all of the requirements of S.I. No. 605 of 2017 (as amended), including S.I. No. 529 of 2020. Non-compliance will incur a penalty on the beneficiaries' payment along with exclusion from the Nitrate Derogation.

Appendix 1

<b>Terms</b>	<b>Whole Farm Stocking Rate excluding N exports <math>\geq 170</math> kg N/ha</b>	<b>Grassland Stocking Rate (GSR) excluding N exports</b>
<i>Definition</i>	<i>Organic N produced by grazing &amp; non-grazing livestock/ holding area (grassland + arable).</i>	<i>Organic N produced by grazing livestock on the holding / grassland area</i>
Use of LESS	Yes	
Liming programme	Yes	
CP 15%	Yes	
Fencing watercourses	Yes	Yes
Setback water troughs	Yes	Yes
Farm roadways	Applies to all farm (if farm roadways present on farms)	

\*WFSR - *Organic N produced by grazing & non-grazing livestock / holding area (grassland + arable).*