



An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine

2022 Nitrates Derogation Terms and Conditions

Closing Date for Applications
14th April 2022

Before completing the online application, please familiarise yourself with the terms and conditions of the Nitrates Derogation as outlined below.

Failure to comply with these terms and conditions will result in the rejection of the Nitrates Derogation for 2022 and shall deem the applicant not eligible to apply in 2023. If a holding is rejected from Nitrates Derogation the 170kgs N/ha limit will be applicable.

Cross Compliance breaches, including exceeding the 250 kg N/ha limit, will be notified to Basic Payment Scheme (BPS) and are subject to the BPS penalty schedule. All related documents and FAQ are available at:

<https://www.gov.ie/en/service/f16b22-basic-payment-scheme/>

Requests to withdraw from derogation will be accommodated, unless the herdowner has been notified of an inspection.

Reminder: 2021 fertiliser accounts must be submitted ONLINE using the prescribed form no later than 14th April, 2022 for those who availed of a Nitrates Derogation in 2021 whether or not an application is being made for 2022 The form is available here: [gov.ie - Rural Environment & Sustainability - Nitrates \(www.gov.ie\)](https://www.gov.ie/en/service/f16b22-basic-payment-scheme/)

GLAS Participants please note:

In accordance with the requirements of Article 28(3) of Regulation EU No 1305/2013, if a requirement that is currently part of a GLAS action becomes mandatory by law during the course of the contract, the action will no longer be eligible for payment. As provided for under Article 48 of this regulation in such cases it will be open to such GLAS participants to opt out of their GLAS contract without penalty or clawback.

Therefore, GLAS participants applying for a Nitrates Derogation from 2021 will not be eligible for a GLAS payment for either the Low Emission Slurry Spreading action (LESS) or the Protection of Watercourses (PWC) action, regardless of whether stocking rate exceeds 170 kg N/ha.

Contact your GLAS advisor for further advice.

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Please read the eligibility criteria and the conditions below carefully before making an application to ensure that you are eligible for a derogation and that you can meet all the conditions in full during the current year.

ELIGIBILITY CRITERIA

- ❑ You must be farming a holding that is at least 80% grass.
- ❑ You must have grazing livestock – derogation is only available in respect of grazing livestock.
- ❑ You must make an annual **ONLINE** application to the Department in the format specified and no later than **14th April 2022**. **Applications will not be accepted by post or e-mail.**
- ❑ **You must not import livestock manure even in processed form.** Importation will result in the rejection of the derogation; therefore the holding is subject to the 170kgs/N/ha limit.
- ❑ You must accept the terms and conditions contained herein before submitting your application.
- ❑ You must adhere to all legislative requirements.
- ❑ You must have sufficient storage for all livestock manure, soiled water and silage effluent.
- ❑ Livestock must be excluded from watercourses on the holding by way of a fence at least 1.5m from the top of the riverbank or water's edge. Watercourses on the holding identified on OSI 1:5000 scale are included in this requirement. *(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.)*
- ❑ Supplementary drinking points must not be located within 20m of watercourses.
- ❑ There shall be no direct runoff of soiled water from farm roadways to waters. The occupier of a holding shall comply with any specification for farm roadways specified by the Minister for Agriculture, Food and the Marine pursuant to this requirement.
- ❑ All slurry applied on the farm must be by applied by Low Emission Slurry Spreading (LESS) equipment.
- ❑ A maximum crude protein content of 15% in concentrate feed for grazing livestock must not be exceeded between April 15th and September 30th, 2022.

DEFINITIONS

- a) "Derogation" refers to the approval to exceed the 170 kg N/ha/year limit of organic manure.
- b) "Grassland farms" means holdings where 80% or more of the agricultural area available for manure application is grass.
- c) "Grazing Livestock" means cattle (with the exclusion of veal calves), sheep, deer, goats, and horses.
- d) "Grass" means permanent grassland or temporary grassland (temporary implying leys of less than four years).
- e) "Parcel" means an individual field or a group of fields, homogenous regarding cropping, soil type and fertiliser practices.
- f) "Watercourses" refers to those identified as any solid blue line on OSI 1:5000 mapping or better.
- g) "New Applicant" means those who did not submit an application in the preceding three years (allowance will be made for changes in legal entity (e.g., individual/partnership/company) as well as first time applicants).
- h) 'fertilisation plan' means an advance calculation about the planned use and availability of nutrients.
- i) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients;
- j) "Commonage" means a land parcel which is held by two or more persons in specified shares or jointly and originally purchased from the Irish Land Commission under the Land Purchase Acts, including land over which two or more persons have grazing rights or the right to take turf.

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DETAILED CONDITIONS

Nutrient Management

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 N/ha, subject to the conditions laid down in the paragraphs below.
2. **Commonage will not be eligible** for the derogation allowance of 250 kg N/ha. The maximum allowed organic N on commonage is 50 kg N/ha with no chemical fertiliser allowed.
3. The total nitrogen inputs shall not exceed the foreseeable nutrient demand of the considered crops, shall account for the supply from the soil, and shall not exceed the maximum fertiliser rates applicable to the farm, established in the Nitrates Action Programme.
4. Total nitrogen application shall be differentiated based on stocking rate and grassland productivity.
5. A nutrient management plan (NMP) or fertiliser plan must be kept for the holding describing the crop rotation of the farmland and the planned application of manure and other fertilisers. This must be submitted online to the Department along with your application before 14th April 2022 unless you submitted a plan to the Department in 2019, 2020 or 2021 that remains valid for 2022.
6. Where a new or amended NMP is submitted in 2022, only a plan produced by the **Teagasc Online Nutrient Management Plan** programme or the **Farm Eye Nutrient Management Plan** programme is acceptable.
7. A plan in relation to the farm shall be amended and submitted online no later than seven days following any changes in agricultural practice on the holding to ensure consistency between the plan and actual agricultural practice.
8. All required associated documentation in support of the application should also be submitted online, unless they were submitted to the Department in 2019, 2020 or 2021 and remain valid for 2022, i.e.
 - Nutrient Management Plan
 - Soil analysis results,
 - Farm map,
 - Farmyard sketch
9. You must submit a **Farm Map** clearly indicating the location of individual fields and the soil sample locations so that these can be identified in the NMP.
10. You must submit a **Farmyard sketch** clearly indicating the facilities available on the holding including those leased/rented these can be identified in the NMP.
11. A limit in the crude protein in concentrate feed for grazing livestock with a maximum **of 15% crude protein** is permissible between April 15th and September 30th, 2022. This information will be included in feed concentrate records farmers submit annually.
12. 2021 fertiliser accounts must be submitted **ONLINE** using the prescribed form no later than 14th April 2022 for those who applied for Nitrates Derogation in 2021. The form is available here: [gov.ie - Rural Environment & Sustainability - Nitrates \(www.gov.ie\)](http://gov.ie - Rural Environment & Sustainability - Nitrates (www.gov.ie))

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13. The application, the NMP, the fertiliser accounts and other supporting documentation may be subject to control by the competent authority.

14. The NMP shall include at least the following:

- a) The crop rotation plan, which must specify the area (hectares) of parcels with grass and parcels with other crops including a map indicating the location of individual parcels;
- b) The number of livestock, a description of the livestock housing and manure storage system, including the volume of manure storage available and a fully labelled **farmyard sketch** clearly indicating slurry storage location, dimensions and volume storage.
- c) A calculation of manure nitrogen and phosphorus produced on the holding.
- d) The amount, type and characteristics of manure exported off the farm;
- e) The foreseeable nitrogen and phosphorus crop requirements for each parcel;
- f) The results of **soil analysis** related to nitrogen and phosphorus soil status;
- g) The nature of the fertilisers to be used;
- h) A calculation of nitrogen and phosphorus from manure over each field;
- i) A clearly labelled **farm map** indicating location of individual fields and the soil sample locations so that these can be identified in the NMP.
- j) A calculation of nitrogen and phosphorus application from chemical and other fertilisers for each field;
- k) Details of the liming programme must be included in the NMP (see grassland management below).
- l) A calculation of the liming requirement for each field and the amount to be applied in 2022.

Soil testing and management

1. NMPs must be based on results of soil analysis dated after September 15th, 2018.
2. To participate in the **P Build up** programme while in derogation soil analysis must comply with conditions re OM sampling as set out in Article 16 (3)(d) of the Regulation. You must attend a P Build up training by an approved FAS advisor.
3. Soil analysis shall be performed for the holding at least every four years for each homogeneous area of the holding, with regard to crop rotation and soil characteristics. At least one analysis per **five hectares** of land is required.
4. The fertilisation plan shall be revised no later than 7 days following any changed in agricultural practices at the grassland farm including results of soil analysis. However, for farmers who are an approved participant in the DAFM Pilot Soil Sampling Programme, if soil results are obtained after 15th March 2022 there will not be a requirement to update the 2022 NMP provided that the original soil samples used in the NMP are still valid. The most up to date soil sample results must be used for the 2023 NMP.
5. **New applicants** who do not have soil analysis results must assume P Index 4 for 2022 but soil sample analysis, in respect of crop year 2023, must be available and the NMP amended accordingly and submitted online to the Department before **31st March 2023**.
6. **Newly owned, rented or leased land** which does not have current valid soil analysis results must assume P Index 4 for 2022. Soil analysis must be conducted if the same land is farmed in 2023.

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Manure and slurry spreading

1. Livestock manure shall not be spread in the autumn before grass cultivation i.e. After 1st August until the end of the closed period.
2. At least 50% of the slurry must be spread before 15th June 2022.
3. **All slurry generated on a holding must be applied by 8th October 2022.**
4. **All** slurry applied to the land must be by way of LESS equipment. Appropriate records shall be maintained on each holding including volume spread, location (LPIS data) and the use of a contractor or own LESS equipment, and related invoices.
5. The total amount of slurry in m³ spread in 2021 must be entered on the on-line application. New applicants who did not use LESS equipment in 2021 should enter zero.
6. A derogation holding must have sufficient storage for all livestock manure produced during the closed period, soiled water and silage effluent produced on the holding.
7. Declarations of movements of organic manure from the holding (exports) must be submitted to Nitrates Division, DAFM by the **31 October** annually. Declarations must be made using the **on-line system only**. This system is available on www.agfood.ie and a demonstration video and user manual are available here: [gov.ie - Rural Environment & Sustainability - Nitrates \(www.gov.ie\)](http://gov.ie - Rural Environment & Sustainability - Nitrates (www.gov.ie)).

Training Requirements:

1. Nitrates Derogation applicants who applied to participate in the Nitrates Derogation in 2020 or 2021 must have completed all elements of a training programme in nutrient use efficiency and the protection of waters (as per training guidelines issued in 2021, available here: [gov.ie - Rural Environment & Sustainability - Nitrates \(www.gov.ie\)](http://gov.ie - Rural Environment & Sustainability - Nitrates (www.gov.ie)))
2. New applicants or applicants who did not apply in 2020 or 2021 must complete training programmes in nutrient use efficiency and the protection of waters by 31st December 2022. These are outlined below:
 - a. Nutrient use efficiency – increasing nutrient use efficiency by getting the most from fertiliser and slurry
 - b. Protection of water – farming sustainably under derogation and reducing the impact of emissions on water and biodiversity

Grassland management

1. Derogation farmers **must record through appropriate software technology (as accepted by DAFM) the grass produced annually on the farm**. However, if new derogation farmers haven't the required skills to undertake this measure, they must complete the required training/upskilling in grassland management by the end of 2022.

Those farmers who recorded at least 20 grass measurements in 2021 must continue to record at least 20 grass measurements in 2022. Those farmers who completed a grassland management training course in 2021 will be required to get set up on appropriate software technology (as accepted by DAFM) in 2022. These farmers have two options for grass measuring in 2022 as follows:

- Record 20 grass measurements on appropriate software technology (as accepted by DAFM),
OR

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- Attend two workshops – workshop on using the software technology to record grass measurements AND workshop on grass measuring and take at least 3 grass measurements in 2022,
- 2. **Clover must be incorporated when reseeding swards** on derogation farms.
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.
- 3. Where soil samples indicate a lime requirement there must be a **farm scale liming programme** on derogation farms. The details of the liming programme are to be provided in the NMP.

The liming programme must be 4 years in duration with a minimum of 25% of lime spread in year 1 and the balance applied over the remaining 3 years, where necessary.

Any lime applied following soil sampling, but prior to the commencement of the liming programme, shall be taken into account and can be deducted from the total liming requirement. Receipts for lime purchased and spread must be retained by the applicant and made available for inspection if required.

- 4. Those who wish to plough grassland shall do so between 1 March and 31 May).
- 5. 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.
- 6. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen (except in the case of clover in grassland with less than 50% clover and other leguminous plants that are under sown with grass).
- 7. Parcels shall be equipped with fences ensuring a minimum distance of 1.5 metres between livestock and watercourses and drinking points shall be installed at a minimum distance of 20 metres from a watercourse.

Biodiversity

All farmers in derogation must adopt **at least one measure** from the following list of actions from the All-Ireland Pollinator Plan;

- 1. Leave at least one mature Whitethorn/Blackthorn tree within each hedgerow.
- 2. Hedgerows shall be maintained on a minimum 3-year cycle. i.e. cut in rotation rather than all at once as this will ensure some areas of hedgerows on your farm will always flower.

BY SUBMITTING AN APPLICATION FORM, YOU ARE DECLARING THAT:

- (A) YOU HAVE READ AND UNDERSTOOD THE ABOVE CONDITIONS,**
- (B) YOU MEET THE ELIGIBILITY CONDITIONS FOR A DEROGATION AND**
- (C) YOU WILL FARM IN ACCORDANCE WITH THE DETAILED CONDITIONS HEREIN IN THE CURRENT YEAR.**

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LEGAL BASIS AND IMPORTANT INFORMATION

S.I. No 113 of 2022, European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2022 also known as the “Nitrates Regulations”. Following the European Union Member States vote in favour of the Commissions Implementing Decision on 17th March 2022, granting Ireland a derogation pursuant to Council Directive 91/676/EEC, SI 113 of 2022 will be amended to incorporate the derogation requirements.

S.I. 749 of 2021, the European Union (Good Agricultural Practice for the Protection of Waters) (Amendment) Regulations 2021 extended the 2017 Regulation (S.I. 605 of 2017 as amended) until 11th March 2022 to allow for the Nitrates Action programme to be finalised.

Other related schemes have their own legal basis, as outlined under their own Terms and Conditions.

The Nitrates Derogation is available to grassland farms on an individual basis. The derogation applies only to grazing livestock on the holding. Farmers who wish to avail of the derogation will have to make an annual application and farm in accordance with a NMP and the conditions set out below.

The derogation allows the application of a higher amount of livestock manure than that provided for in the Nitrates Regulations (where the limit is 170kg N/ha/annum) subject to certain conditions. Successful applicants will be able to apply livestock manure in excess of 170kg/ha/annum in accordance with their NMP and up to a maximum of 250kg/ha/annum. If your stocking rate exceeds 250kg N/ha/annum, you must consider alternative arrangements such as exporting some of the livestock manure to ensure the stocking rate does not exceed 250kg N/ha/annum. Please note that derogation farmers must have sufficient storage for all livestock manure produced during the closed period, soiled water and silage effluent produced on the holding.

Nitrogen and Phosphorus Statements are available online each year at <http://www.agfood.ie> to farmers who, in the previous year (a) had cattle recorded on the Department’s AIM system and (b) made application under the Basic Payment Scheme. The Statement sets out the quantities of nitrogen and phosphorus produced **by your cattle** during the previous year. This will give you a clear indication of your livestock manure nitrogen status. It will also help you to plan for the year ahead and to decide if you need to apply for a derogation.

Remember that the statement will show the nitrogen and phosphorus produced by **cattle only**, so if you have other livestock on your farm (such as sheep, pigs, poultry, horses, etc) you will need to work out the N and P that they produced and add this to the figure for cattle to get the total figure.

FARM ADVISORY SYSTEM

Under Article 13 of Council Regulation (EC) No. 1782/2003 each Member State is required to establish an approved Farm Advisory System (FAS) to advise farmers on land and farm management. The advice shall cover at least the Statutory Management Requirements (SMRs) and the Good Agricultural and Environmental Conditions (GAEC) referred to in Chapter 1 of the Regulation (Cross-compliance). Participation by farmers is voluntary.

Ireland has an advisory system in place and the full listing is available at:

gov.ie - [Farm Advisory System \(FAS\) \(www.gov.ie\)](http://www.gov.ie)

DATA PROTECTION NOTICE

The Department of Agriculture, Food and the Marine complies with all requirements under Data Protection and Freedom of Information legislation, more information on DAFM’s policy can be found here: gov.ie - [Data Protection \(www.gov.ie\)](http://www.gov.ie) and also in the Terms & Conditions for the Basic Payment Scheme 2022. gov.ie - [Basic Payment Scheme \(www.gov.ie\)](http://www.gov.ie)

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Information specific to the personal data being collected by Nitrates Division

The following data is specific information in relation to the personal data processed for the purposes of ensuring compliance with the Nitrates Regulations. The Department of Agriculture, Food & the Marine's general data protection policy should be read in conjunction with this document and can be viewed here: [gov.ie - Data Protection \(www.gov.ie\)](http://www.gov.ie)

Specified purpose

The personal data sought from you, or previously furnished by you, is required for the purpose of complying with the Nitrates Regulations, audit, evaluation purposes, cross compliance controls, controls relating to the legislation underpinning cross compliance and all Rural Development measures, as required by Article 65 of Commission Implementing Regulation (EU) 809/2014. Also, personal information may be released under the terms of the relevant Data Protection legislation in force, the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 and the Freedom of Information Act 2014. Failure to provide all the personal data required to facilitate the processing of the application; including data testing, under the scheme will result in DAFM being unable to further process the application. Failure to provide certain information which you are required to provide under the Terms and Conditions of the schemes may result in the necessity to repay monies already paid under the schemes, or in sanctions being applied under these schemes. You should consult the Terms & Conditions and Specification of the schemes in this regard.

Sanctions for failure to comply with the Nitrates Regulations are provided for in EU Regulations 1306/2013, 640/2014 and 809/2014 and are applied under the Terms and Conditions of the Direct Payment Schemes and Rural Development Programme measures.

The Department may also use data provided for the purposes of facilitating the processing of an application for participation in other related schemes operated by the Department of Agriculture, Food and the Marine or for the purposes of updating information on the relevant databases held by the Department in connection with these schemes. Each scheme has its own legal basis as outlined under their own Terms and Conditions.

Legal basis

The current legislation for Data Protection in Ireland is the Data Protection Act 1988 as amended by the 2003 Data Protection Act, The Data Protection Act 2018 and The General Data Protection Regulations (EU 2016/679).

Recipients

Information provided to Nitrates Division will be shared, with other divisions within the Department, for the purposes of processing other related scheme applications in a timely and efficient manner.

When you submit information to Nitrates Division, some of your personal data will be made available to other Government Departments/Agencies/Local Authorities, but only where there is a valid legal basis to do so. The purpose of this sharing of data is for audit, evaluation purposes, cross compliance controls, controls relating to the legislation underpinning cross compliance and all Rural Development measures, as required by Article 65 of Commission Implementing Regulation (EU) 809/2014. Also, personal information may be released under the terms of the relevant Data Protection legislation in force, the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 and the Freedom of Information Act 2014.

Information will be shared within the Department for the purposes of monitoring and evaluating CAP as per the Regulations (EU Reg 1306/2013) in accordance with the Data Protection legislation in force. Personal data may be used for statistical, research and analysis purposes in some circumstances, but will only be done so in compliance with the Data Protection legislation in force. Data used for such purposes will be pseudonymised (masked) or anonymised, as appropriate, to protect the security and

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confidentiality of the data. The use of the data in this way may facilitate the Department in informing policy decisions into the future, which would benefit the Irish farmer and the Agriculture Sector.

The Department is also currently obliged by law to provide information concerning applicants in response to requests received from the Office of the Revenue Commissioners, An Garda Síochana, and other bodies, in accordance with Section 8 of the Data Protection Acts 1988 and 2003. The introduction of the General Data Protection Regulation in May 2018, and any further national Data Protection legislation, may change the requirements and the legislative basis for such requests.

As part of this requirement to comply with the Nitrates Regulations, you may be requested by the Department or relevant agents acting on its behalf, to supply data in relation to your participation to other Schemes, and facilitate on-farm inspections/assessments, where required for the purpose of assessment, verification, evaluation, or research purposes as provided for under the Regulations (EU Reg 1306/2013). Not to supply such information may invalidate/cancel your application or incur sanctions in those schemes.

Transferred outside the EU

Information provided in relation to the Nitrates Regulations is not currently transmitted outside of the EU.

Retention Period

The data submitted in support of the application by the data subject will be retained by DAFM only as long as there is a business need to do so in line with the purposes for which it was collected.

After this time, it will be marked for destruction and will be destroyed in line with internal guidelines or guidelines for destruction received from the National Archives Office or associated permissions received from them.

Data provision being statutory or contractual obligation

The data provided for this purpose is being requested on a statutory basis under the Nitrates Regulations and Irish legislation.

Automated Decision Making

Personal data provided to Nitrates Division will be processed automatically for the purpose of the efficient running of the scheme.

Automated decision making will also be used for the purposes of selecting participants for inspection in accordance with the regulations (EU Regulations 1306/2013 & 809/2014, , S.I. 113 of 2022, S.I. 605 of 2017 & S.I. 65 of 2018, S.I. 40 of 2020, S.I. 225 of 2020, S.I. 529 of 2020 and S.I. 749 of 2021.)

Information from Third Party

Your personal data in relation to Nitrates records may be obtained from another party that submits information to Nitrates Division, this includes (but is not exhaustive) for example in a declaration submitted by them of a transaction regarding the movement of livestock manure, the temporary movement of animals or the short-term rental of land in line with this Department's requirement to ensure compliance with the Nitrates Regulations and associated legislation. In circumstances where this Department did not gather your personal data you are still entitled to exercise your rights in relation to this personal data and the details on how to exercise individuals rights are detailed here [gov.ie - Data Protection \(www.gov.ie\)](http://gov.ie - Data Protection (www.gov.ie))

Technical information on data collected:

Technical information on the cookies used on our Department's website is available [here](#).

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Any questions relating to these terms and conditions should be addressed to:

Nitrates Section,
Department of Agriculture, Food, and the Marine,
Johnstown Castle Estate,
Wexford,
Y35 PN52.

Ph:053-91 63 425

Email: nitrates@agriculture.gov.ie