



CONSULTATION PAPER ON THE PROPOSED NITRATES ACTION PROGRAMME REGULATIONS (NORTHERN IRELAND) 2010

ULSTER FARMERS' UNION RESPONSE

1. INTRODUCTION

The Ulster Farmers' Union (UFU) accepts that the EU Nitrates Directive (91/676/EEC) requires Member States to review and, where necessary revise their action programmes, including additional measures, at least every four years. The UFU therefore accepts that the Northern Ireland 2006 Nitrates Action Programme Regulations must be reviewed by 31 December 2010.

The UFU also accepts that the Commission Decision (2007/863/EC) granting a derogation for Northern Ireland expires on 31 December 2010 and must also be renewed and that before a derogation application can be made to the EC, an acceptable action programme must be in place.

Taking into account that the reviews outlined above are required by the EC, the UFU welcomes the opportunity to comment on proposals for a new Nitrates Action Programme 2011-2014. However the Union has concerns about some of the proposals outlined by the Department of Agriculture and Rural Development (DARD) and the Department of the Environment (DOE) in the consultation document.

2. SCIENTIFIC REVIEW

The UFU generally welcome the findings of the Scientific Review which show a number of positive trends since the introduction of the Nitrates Action Programme in 2007. As the consultation document outlines, a number of measures were introduced on a phased basis, with the operation of all measures only being imposed from 1 January 2009, therefore there has been a limited opportunity to assess what impact the Action Programme in its entirety has had on the local environment.

Northern Ireland farmers have accepted the difficult challenge this legislation presents and have taken some very positive steps towards meeting the requirements. Over £200 million was invested in manure storage facilities since 2006 through the Farm Nutrient Management Scheme (FNMS), with £80 million of this invested by local farmers. Additional works have also been carried out without the support of the FNMS. The reductions in chemical fertiliser purchases have been very significant. However, the UFU are concerned that levels of phosphate fertiliser used in 2008, equivalent to 1938 phosphate fertiliser levels, may be

unsustainable in the long term and therefore there may be a rise in these figures in due course.

The UFU also welcomes the recognition that compliance with the measures has been 'very good'. Given that these rules have been imposed on farmers and often required a complete change in practice on many farms, this is very positive. The UFU supports the Departments' view that awareness raising of the various measures and improved guidance and training needs to be continued. The UFU has played an active role in informing, guiding and raising awareness amongst our membership and that service will continue.

The UFU welcome the key conclusions and recommendations of the Scientific Working Group.

3. STAKEHOLDER ENGAGEMENT

The Ulster Farmers' Union welcomes the engagement with Stakeholders on the Nitrates Action Programme to date and encourages the Departments to continue this process.

4. ENGAGEMENT WITH THE EUROPEAN COMMISSION

The UFU is concerned that despite the Departments Scientific Working Group recommending that there should be 'minimal change' to the Northern Ireland Nitrates Action Programme, the EC has suggested a number of areas which should be amended. The UFU has always outlined that the Nitrates Action Programme must be based on sound science and feels that a lot of the EC views go against this principle.

i. Applying manures in February and storage capacity

The UFU is concerned about the EC questioning the application of organic manures during February and the adequacy of 22 weeks livestock manure storage capacity if conditions for slurry spreading are not suitable at the end of the closed period.

The UFU highlighted the importance to local farmers of spreading in February during the 2005/2006 consultation on the Nitrates Action Programme. These circumstances have not changed and February must be retained for slurry spreading.

The UFU have always questioned the use of calendar dates to determine farming practices. Farm work is dictated by weather and ground conditions and with weather patterns continuing to change farming is becoming much more unpredictable. EU rules must be practical and flexible, otherwise in some instances it will be impossible for farmers to comply with them.

The UFU would question the research findings put forward by AFBI on the impact of spreading slurry in February. The UFU are concerned that AFBI have carried out this research in a way which does not reflect general farm practice. It is our understanding that AFBI are applying the maximum rate of slurry permissible under the current Action Programme rules of 50m³/ha to the research plots. This would be much higher than what would be normal farm practice in Northern Ireland and therefore may give the EC inaccurate information on the likely impact of spreading manures in February.

The 22 week storage requirement already allows for additional capacity for when conditions outside the closed period (15.5 weeks) are unsuitable.

The 22 weeks storage requirement was imposed on the industry and many farmers have invested significantly in their farm business with some assisted through the Farm Nutrient Management Scheme (FNMS). It is inconceivable that the EC would consider changing this storage requirement at this time before the current measures have had sufficient time to 'bed-in'. The long term water quality trends are showing a decline in nitrates and phosphorus in the rivers and therefore the UFU will not accept that further action is required by the farming sector.

ii. Spreading and storage of farmyard manure

The UFU are opposed to the introduction of a closed spreading period for farmyard manure (FYM). The EC accepted in 2006 that a closed period for FYM was not required. Initial data on water quality is showing a general improvement even before the current Action Programme was implemented in full, therefore there is no evidence to suggest that this practice is causing problems.

There are also concerns from sheep farmers that if this rule was imposed on the industry and farmers were forced to apply farmyard manure from February onwards, there could be increased threat of disease to sheep and lambs. Earlier spreading allows sufficient rotting of the manure over the winter months which permits sheep to graze this land early in the year.

FYM accounts for a small percentage of the organic manures spread in Northern Ireland therefore the continuation of spreading of FYM during the winter months is not likely to ever be a significant environmental issue. It is an important practice for those farms who currently work with FYM and therefore any changes to the current rules would have a significant impact on the operation of their farm business. This is likely to impact the smaller beef and sheep hill farms which rely on spreading FYM all year round when conditions are appropriate. Some small farms were advised by DARD to clear out houses and spread FYM on a daily basis when conditions are suitable and the proposed changes are threatening this practice.

There is no closed period for FYM in England, Scotland or Wales and therefore the UFU do not accept that Northern Ireland should move beyond the other regions on this aspect.

The UFU also totally reject the proposal to phase out the use of farmyard manure field heaps and the proposals to reduce the length of time that FYM can be stored in heaps from 180 days to 90 days. FYM field heaps are very important to those farms that avail of these within the local industry. Farms in England, Scotland and Wales are permitted to store FYM in field heaps for up to 12 months. In these regions the field heaps are generally much larger than those in Northern Ireland and therefore potentially pose a greater threat, yet a considerably longer field storage period is permitted. It is therefore unacceptable to reduce the storage requirement to 90 days. This would cause particular problems on arable farms.

In addition, many farmers did not avail of the Farm Nutrient Management Scheme (FNMS) for upgrading/building middens as the current Action Programme permitted field storage which meant they were not originally required to invest in additional facilities. The UFU believe that many farms would not have adequate alternatives to field heaps and therefore

the introduction of this proposal would require farms to make significant investment without access to a supporting capital grant scheme which is totally unacceptable. It is totally unfair if the rules are now changed and the opportunity to avail of the FNMS is now gone. If DARD/DOE change the measure and therefore prohibit the use of field heaps, then the UFU insist that a further grant scheme must be introduced to allow farmers who rely on these to create alternative facilities.

A number of cattle farmers purchased slurry separators on the basis that the solid fraction of the separated slurry can be stored in field heaps and therefore this allowed them to reduce their overall slurry storage requirements. If the rule is changed at this stage it is again unacceptable that further investment may be required without the assistance of the FNMS.

The UFU are aware that one of the compliance concerns around the current Action Programme is the use of middens with inadequate effluent collection. The removal of the ability to store in field heaps is likely to add to the number of farms who would fail to comply with the necessary standards for middens and increase the environmental risk. By introducing the proposed change the Departments would be increasing the risks to the environment which makes no sense.

The UFU believe there is no sound evidence to suggest that FYM field heaps are causing environmental problems in Northern Ireland and therefore there is no justification for any change. The UFU would suggest that DARD / DOE consider carrying out research on FYM field heaps in Northern Ireland.

iii. Temporary measure allowing field storage of poultry litter

The UFU is concerned about and opposes the proposal to withdraw the temporary measure allowing field storage of poultry litter. At the time when the FNMS was launched, poultry farmers were encouraged not to apply to the scheme due to Government commitments and support for an off-farm facility to deal with poultry litter. While the consultation identifies that 'progress was not made with the off-farm solution for poultry litter on the timescale originally envisaged', this was of no fault of the poultry farmers or the industry. The industry through 'Rose Energy' has submitted a planning application to build a facility which would convert poultry bedding and meat and bone meal (MBM) - into electricity however, there have been continuous delays in the planning system which has not permitted this facility to proceed along the original timescales. The UFU is committed to supporting the Rose Energy project and urges Government to provide its support as well.

If the EC is adamant that the measure permitting poultry field heaps must be withdrawn, the industry must be allowed time to adapt. It should be noted that poultry farms all tend to be on different production cycles therefore only a percentage of poultry farms would actually be removing litter from their farms and storing litter at different times reducing any potential environmental impact.

There also needs to be some flexibility to permit field heaps for poultry litter prior to spreading particularly on arable farms.

With the lack of progress on the off-farm solution being outside the poultry farmers' control, and the proposed change to the measure allowing the use of field heaps, the UFU believe that a further grant scheme must be introduced to allow farmers who rely on field

heaps on both the poultry farms and/or those farmers importing litter for spreading to create alternative facilities.

The UFU would also ask DARD/DOE to consider that the 26 weeks storage required for poultry farms is amended to take account of the reduced storage required for those poultry farmers who directly export litter to other farms/facilities when houses are cleared out.

It should be noted that the Assured Chicken Production (ACP) Farm Quality Assurance Scheme states that litter must be stored at least 1 km off site for biosecurity purposes. This will prevent the storage of litter on many farms and therefore a satisfactory solution to this problem must be found to allow poultry producers to comply with both the ACP codes (compliance is a requirement of the poultry processors) and the Nitrates Action Programme for Northern Ireland. This is also good biosecurity practice in the egg laying sector where litter systems are operated.

iv. Application of chemical nitrogen fertiliser during the closed period, on the basis of crop need

The UFU believe that retaining the ability to spread chemical nitrogen during the closed period for those crops where need can be demonstrated is essential. As this is most relevant to vegetable crops and the vegetable sector is very small in Northern Ireland, the UFU feel that this is not likely to have any detrimental impact on water quality in Northern Ireland. The UFU welcome the Department's commitment not to change this measure.

v. Spreading distance from a waterway for chemical nitrogen fertiliser

The UFU are opposed to any change to this measure. The NIEA figures outlining compliance with the current Nitrates Action Programme shows that no breaches have been identified against this measure. There has been no evidence of chemical fertiliser leaching into watercourses due to the current 2m rule. The UFU feel that there is therefore no justification for change.

vi. Steeply sloping land

The UFU believe that the proposal to change the wording of this measure, removing the 'risk clause', would have very serious consequences for Northern Ireland agriculture. This would mean that the measure would read "*the land application of nitrogen fertiliser shall not be permitted when the land is steeply sloping land*"

The UFU believe that many fields in Northern Ireland would fall within the proposed definition of 'steep slopes' and therefore this causes us much concern. UFU members have considered the definitions of steeply sloping and compared with fields on farm and believe that this would include most land in Northern Ireland due to the removal of the 'risk clause'. The UFU are totally opposed to any changes to the wording of the current measure. If fertiliser (chemical and organic) cannot be spread on 'steep slopes', as is proposed this would prohibit the fertilising of most fields across the Province. This would result in large areas of Northern Ireland becoming unproductive due to the inability to add vital nutrients to support crops and grass. When discussing the proposals, farmers have also already indicated that if the proposed changes are introduced then there will be a need to move field

boundaries to ensure the 'average' slope falls outside of the definition of steeply sloping. Such action would have detrimental consequences for biodiversity etc.

England, Scotland, Wales and the Republic of Ireland (ROI) all have the 'risk clause' included in their existing measures. The ROI are also undergoing a review of their Action Programme with the EC and the UFU are aware that the EC have not asked them for this risk clause to be removed. The UFU therefore insists that NI does not change the wording of the existing measure outlined in the 2006 Nitrates Action Programme Regulations.

Any move to do so would have very significant consequences for the Northern Ireland agri-food sector which is of major importance to the local economy.

vii. *Derogation*

The UFU support the need for the nitrates derogation to be retained in Northern Ireland. The derogation is very important to a significant number of local farmers. No additional measures should be included in any renewed derogation.

It is disappointing that the number of farmers participating in the derogation is not higher. However, the UFU believe that this can be attributed to DARD advice, inappropriate policing of the derogation measures by NIEA and a lack of understanding by the farming community.

The UFU has some concerns about the actions of NIEA when policing the derogation. The heavy handed approach taken when assessing the various records is over-zealous and unnecessary. Minor issues identified in record keeping will not have a detrimental impact on the environment.

The UFU agree that DARD and NIEA need to do considerably more to encourage more farmers to apply for the derogation if applicable for their business.

viii. *Nitrogen Excretion Rates*

The Union supports the proposal to amend the Nitrogen excretion figures for pigs and poultry.

It should be noted that there are currently some discrepancies between the calculations for the amount of litter/slurry that is required to be exported from pig/poultry farms in order to meet the 170 kgN/ha limit and the amounts actually produced on farm. It is often the case that the farms do not actually produce the amount of material which is needed theoretically to be exported to meet the limits. This should be investigated further.

5. WATER FRAMEWORK DIRECTIVE

The UFU notes that under the Programme of Measures for agriculture in the RBMP there are a number of other existing and proposed measures to reduce phosphorus inputs from agriculture in addition to the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006. These include;

- the reduction of phosphorus in feedstuffs:
- ensuring sustainable use of manures with high phosphorus content; and
- production of a report on the current phosphorus budget for NI to support the review of the need to give statutory effect to phosphorus balances.

The UFU would highlight that the industry has taken action to reduce phosphorus in livestock diets over the last number of years. There is some evidence to suggest that this may be having some detrimental impacts on livestock. Some local pig farmers have observed increased tail-biting and necrosis of the ears in their pig herds and linked this to phosphorus deficiencies in diets. It is important that DARD and DOE consider animal welfare at all times when reviewing phosphorus in livestock diets, and continue to monitor the impact of the current phosphorus controls on animal welfare and productivity.

The UFU have consistently opposed the introduction of phosphorus balances. The reduction in the P content of livestock feeds and the restrictions introduced on the use of inorganic fertiliser containing P should substantially reduce the annual P surplus in Northern Ireland. This coupled with the implementation of a maximum annual organic N limit and the proposed development of an alternative disposal method for poultry litter negates the need for individual farm phosphate balances. The UFU questions the relationship between an individual farm P balance and improving water quality and believe that these would not provide any improvement above the generic P control measures which have already been introduced for feed and fertiliser. The UFU believes that P balances would be a ‘paper exercise’ which is complicated and bureaucratic and will be of little benefit to water quality but has the potential to destroy the pig and poultry sectors.

6. PROPOSED ACTION PROGRAMME FOR 2011 – 2014

As outlined in Section 4 of this response, the UFU is opposed to most of the DARD/DOE proposals to amend the 2006 NAP Regulations and therefore rejects most of the revisions to the regulations outlined in this section in the consultation document.

The UFU **opposes changes** to;

- the **definition** of ‘steeply sloping land’
- **Regulation 6** – including a closed period for FYM
- **Regulation 7(2)(f)** – removing the risk clause regarding application of fertiliser to steeply sloping ground.
- **Regulation 7 (4)** – increasing the spreading distance for the application of chemical fertilisers to 2m.
- **Regulations 11(1) and 11(4)** – The UFU totally opposes the introduction of this regulation on the management of silage effluent facilities. The UFU believes this is an attempt to ‘gold plate’ the existing legislation and goes beyond the EC requirements. The Union believes that the NIEA already have sufficient regulatory

tools to deal with the mismanagement of silage effluent facilities. If this regulation is introduced, NIEA would enforce under cross-compliance making it easy for the Agency to penalise farmers. ‘Management’ is a very grey area and the UFU feel that this would be open to abuse by over-zealous inspectors. This proposed change cannot be accepted by the industry.

- **Regulations 13 (4)**– prohibits field storage of FYM from 31 December 2012
- **Regulation 13 (1b)**– reducing the length of time FYM can be stored in a field from 180 days to 90 days
- **Regulation 14** – only permitting the storage of poultry litter in a midden
- **Regulation 25** – The UFU are generally opposed to this change. The UFU feel that the onus should remain with the ‘controller’ to ensure that any appropriate person working in the farm business is aware of the rules and the consequences of not complying. Due to the link of these regulations to cross-compliance measures, if this change was introduced there is the possibility that the farmer and the ‘appropriate person’ could be penalised for any breach. The Union believe that again the Departments are ‘gold plating’ EC requirements and this is not acceptable.

The UFU **accepts and welcomes the changes** to:

- **Tables 1 and 2 of the Schedule** – new values for pig nitrogen excretion rates and total N content of pig slurry.
- **Table 8 of the Schedule** – includes a greater range of standard phosphorus contents.

The UFU welcomes the Department’s intention to give consideration to the amendment of **Table 3 of the Schedule** to include new values for poultry nitrogen contents obtained from findings from forthcoming research.

7. REGULATORY IMPACT ASSESSMENT

The UFU would question some of the figures within the partial Regulatory Impact Assessment outlined in the consultation paper.

The economic assessment of the proposed change to the ‘steeply sloping land’ measure is inaccurate. This completely underestimates the impact that this measure would have on the local agri-food sector. The removal of the ‘risk clause’ will result in significant amounts of land in Northern Ireland becoming unsuitable for spreading and therefore unproductive for local agriculture. It is our understanding that the data used to assess this impact was based on 100 m transects of Northern Ireland rather than to assess ‘steep slopes’ on a field by field basis. UFU members have consistently expressed concerns at the proposed changes to this measure and the very significant impact that this would have on their farm businesses due to the inability to spread nutrients on land that is currently productive. The UFU believe that if this measure is introduced as outlined in the consultation document, it has the capacity to force many farmers out of business due to the inability to farm any ‘steeply sloping land’. The loss of productivity from farms would have a resultant negative impact on all the

ancillary industries and would therefore have grave consequences for the Northern Ireland economy.

The UFU believes that the statement “however, it is likely that chemical fertiliser and manures will not be spread on many steep grassland slopes because it is not practical for the spreading machinery to operate on such terrain” is inaccurate. UFU members have considered 15% and 20% slopes and believe that a vast proportion of Northern Ireland farmland would be classified at this or above.

There are also concerns that if these rules prohibit fertilisers (chemical and manures) being applied to steep slopes and that the current grass/crops cannot be managed, there may be questions around the eligibility of this land for claiming Single Farm Payment as without active management it is likely that scrub etc will encroach on these areas. This would also have a detrimental impact on biodiversity.

The UFU notes the costs outlined to upgrade or build new storage facilities if the ability to store FYM in field heaps during the closed period was removed. The additional cost of up to £15,000 for each of 500 beef / sheep farm businesses is not feasible given the current viability of beef and sheep farms. This is an additional cost which the UFU believe is unnecessary given the lack of sound scientific evidence showing any environmental problems in Northern Ireland from the use of field heaps which meet the current requirements.

The introduction of a closed period for farmyard manure may have an impact on agricultural contractors. These contractors only have limited opportunity for work during the winter months since the introduction of the closed period for slurry and chicken litter therefore there may be further issues if a closed period for FYM is introduced. It is therefore inaccurate to state that there are no direct costs associated with any amendment to this measure.

The additional costs for the storage of poultry litter required by some farmers are also a concern. Arable farmers who are often importing litter were unable to apply for the Farm Nutrient Management Scheme assistance due to a lack of livestock numbers on farm and are now facing having to potentially make investment in storage facilities for litter if the ability to store in field heaps is removed. The poultry sector also faces the problems of locating new facilities in an area which will allow them to meet the biosecurity requirements for the poultry unit. Any additional costs on farms are not acceptable to the industry that is operating in already challenging conditions.

8. OTHER ISSUES

There are a number of other issues within the current Nitrates Action Programme which the UFU believe should be re-considered during this review and the necessary amendments made. These are as follows;

- Exceptional weather conditions can make it difficult to comply with the organic manure spreading closed period. There is currently no industry-wide flexibility to deal with

exceptional weather conditions and this needs to be re-considered. At some stage in the future Northern Ireland may well face very wet weather conditions in late Summer and early Autumn meaning that when the closed period begins on 16 October, farmers won't physically have been able to get their slurry spread prior to this date. More flexibility is therefore needed to deal with such circumstances.

- The UFU are also concerned that there is no Guidance for farmers facing Force Majeure circumstances. While the current legislation allows for Force Majeure there is no system available to advise farmers on how best to cope when facing such circumstances. This results in farmers having to make their own decisions to deal with the problem which may ultimately not be the best outcome for the Environment. The UFU feels that there should be more support for farmers in such circumstances.
- The UFU object to the practice of NIEA using soil maps to assess soil type on farm. The UFU have concerns regarding the use of these AFBI soil maps to identify soil types as AFBI have advised that these maps are not accurate at field level. The UFU would therefore question how these can be used for this purpose. These maps are not available to farmers and we feel that it is therefore unfair for NIEA to be using them. It is our understanding that soil maps are not used by those carrying out inspections for this aspect of cross-compliance in Scotland, England and Wales. The UFU feels that NIEA should take the farmer's word for the relevant soil types as opposed to using soil maps in order to assess soil nitrogen status. The system for assessing crop requirements for crops other than grass needs to be simplified in the next Action Programme. Currently this is one of the most difficult areas for farmers seeking to comply with the various controls and action needs to be taken to simplify this process. The UFU would welcome the opportunity to discuss this with DARD/DOE/AFBI and NIEA.
- The NIEA must show more flexibility when policing the Nitrates Regulations on farm. It is apparent in cases where an incident has been reported that the assumption taken by the inspectors is that the farmer is guilty of an offence before any investigation has taken place which is not acceptable. There are some changes required on how rules are interpreted / policed particularly when assessing the paperwork for derogated farms.
- The UFU believes that farms that can demonstrate a level of environmental compliance through participation in other schemes such as the various sectoral Farm Quality Assurance Schemes or agri-environment schemes should have a reduced risk of being chosen for inspection. It is also unacceptable that some farms can be selected for both IPPC and Nitrates cross-compliance inspections. IPPC farms are regularly visited and a raft of areas are inspected included all those under the Nitrates Action Programme. It is therefore a waste of Government resources for these IPPC farms to be also selected for Nitrates inspections.
- The UFU are concerned that some inspections are carried out late in the year and therefore will cause delays to a farmer's Single Farm Payment. It is vital that inspections are carried out as early as possible in the year to avoid such delays to SFP.
- The UFU supports the continued support from DARD through the CAFRE advisory service to help farmers understand and meet the various measures.

- The UFU would suggest that DOE consider changing the legislation including that a breach is only registered if the potential pollutant can enter the waterway (similar to the SSAFO Regulations). Currently if for example, slurry is spread within 10 m of a waterway a breach could be imposed despite the slurry having to perhaps flow ‘uphill’ or over a barrier.
- The UFU suggests that DARD and DOE must be sensitive to the discussions with the EC around the interpretation of land eligibility for Single Farm Payment claims. The definition of agricultural area outlined in the current Nitrates Regulations is satisfactory and must not be changed regardless of the outcome of the SFP eligibility discussions.

9. CONCLUSIONS

The UFU is generally opposed to any change to the current Nitrates Action Programme for Northern Ireland. Many of the changes proposed in the DARD/DOE consultation document would have a detrimental effect on local farmers and the entire agri-food sector and are not acceptable.

The current regulations have only been in place for a short period of time and have not had sufficient time to ‘bed-in’. It is however, already evident that they are having a positive impact on the environment. It is therefore inappropriate for changes to be made to the Northern Ireland Nitrates Action Programme at this time. DARD and DOE must oppose the European Commission’s challenge on this issue and fight to retain the current Action Programme measures in order to prevent unnecessary costs and regulatory burden being imposed on Northern Ireland farmers.