

Nitrate Pollution Prevention Regulations 2008

Nitrate Vulnerable Zones (NVZs)

NVZ Fact Sheet 3: Who is responsible for complying with the NVZ regulations?

Version 1.2, February 2011

Introduction

This fact sheet supplements the Nitrate Vulnerable Zone (NVZ) Guidance [Leaflet 2](#). It clarifies who is responsible for complying with the NVZ rules on a particular parcel of land.

What is the problem?

The occupier of the holding is directly responsible for complying with most of the NVZ rules. Particular difficulties in demonstrating compliance with the NVZ rules can arise when more than one person has agricultural use of the land, possibly over short periods (for example where there is a grazing licence), and it could be unclear who the occupier is for the requirements of these rules.

All the rules that relate to the spreading of fertiliser place responsibility on the person who is carrying out the spreading. In enforcing these rules, it will be taken that the person spreading is the occupier, or someone who is acting under their direction. This follows from the interpretation of a tenant described below.

Who is involved in farming?

The 2008 regulations do not define who the occupier is, and Guidance [Leaflet 2](#) only says '*Typically, the occupier is usually considered the person who owns the land, or the person who rents and farms the land.*

We will enforce the NVZ rules on the basis that **the occupier** is either the **owner/occupier** or **tenant** of the land. These are the only people with the right to carry out or allow the activities which are controlled by the rules. In this Fact sheet, the term 'occupier' will always mean the occupier for the purposes of the NVZ regulations.

The exact nature of an agreement for the use of land can sometimes be unclear, even to the parties involved, though the behaviour of the parties may offer compelling evidence. Before we look in more detail at how the NVZ rules should apply, we need to clarify who the parties are:

An owner – who may be either an owner/occupier, or a landlord who has let the land on tenancy to a tenant. An owner/occupier would be the 'occupier' for the purposes of enforcing the NVZ rules, but a landlord would not.

A tenant – a person who has been granted 'exclusive occupation' of the land by the landlord. This will be subject to terms and conditions, and often for a set period. The landlord has no rights of access to or use of the land unless the tenancy agreement allows this. An agricultural tenancy would be under

either the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995 (a Farm Business Tenancy).

A licensor – a person who grants a licence to a licensee. A licence can only be granted by the owner or tenant, and so by definition the licensor is also the occupier.

A licensee – a person given permission by the owner or tenant for access to the land, usually for a specific purpose and often for a short period, normally to take grass by mowing or grazing for part of the year. A licensee does not control the land or have rights to use it other than those granted in the licence. A licensee must not fertilise the land unless the licence allows this. For this reason, if a licensee applies fertiliser to the land, they will be considered to be acting as a contractor to the occupier.

There may be things that a licensee may have to do, or not do, under the NVZ rules when using the land. However, it is the licensor (occupier) who is responsible for complying with the rules, and should give clear instruction in a licence agreement. As a minimum the licensee will need to keep records and provide relevant information to the licensor.

The boundaries between tenancies and licences are often blurred, and sometimes this is done deliberately. Simply saying that an arrangement is a licence doesn't make it one, if the parties act like it is a tenancy. What actually happens on the ground will be taken account of where there is uncertainty.

A contractor – is a person carrying out an activity on behalf of the occupier. That activity might be a specific action (e.g. sludge spreading or ploughing) or a longer term process (e.g. to plant, manage and harvest an arable crop). The work must be done in accordance with the contract, which should now be drafted with NVZ liabilities in mind, where these are relevant. The contractor cannot be responsible for complying with the NVZ rules as he is not the occupier for the purposes of enforcing the NVZ rules.

SPS claimant – to be eligible to make a claim a farmer must have eligible land at their disposal on 15 May, and they must either carry out an agricultural activity or be responsible for the land being maintained in Good Agricultural and Environmental Condition (full details can be found in the Single Payment Scheme literature.)

Legal agreements

Where a new tenancy or licence is granted for land, we recommend that a formal written agreement is put in place to make clear the responsibilities of each party in relation to each of the NVZ rules. This will help to avoid any situations where relevant records are not kept or passed on to the occupier, where fertilisers are applied without the occupier's permission, or where stocking rates are unacceptably high. All of these could lead to penalties being applied to the occupier for a breach of the rules. We would advise you to seek professional guidance on making this agreement (see also [Section 6](#) below).

Holdings and rented land

The rules say that the occupier must record the size of their holding by 30 April 2009, or 2010 in new NVZs. This record must be updated each time any land comes into or goes out of the holding. This will happen if land is bought or sold, or when tenancies start or finish, regardless of how short they may be. This record will be the basic definition of the status of land in relation to this Fact sheet and should be supported by a map showing the holding and any relevant tenancy agreements or grazing licences retained. No area of land should be recorded as part of more than one holding at any time.

We will now explain what land should be included in a holding:

Land held on a tenancy – this should be shown as part of the tenant’s holding. The tenant is the occupier and has overall responsibility for NVZ compliance for that land irrespective of whether it is long term tenancy or for a short period only.

Grazing licences – these should be shown as part of the licensor’s holding, as they are the occupier.

Tack arrangements – these are a particular type of licence agreement where livestock are sent to another farm for grazing for a set period less than one year. We will consider these livestock to be on the holding, and so (if the land is in an NVZ) they should be recorded by the occupier for the relevant controls. The owner of the livestock should provide the data on the number of animals in each category shown in [Leaflet 3](#). This does not affect either the status of the land, or of the farmers involved.

Common land – there is no identifiable occupier for common land since a number of individuals will have equal access. However, fertiliser cannot be spread onto common land, so only NVZ rule that applies is the livestock manure N farm limit. The Q&A document gives advice on how to apply this rule on common land.

EU grants, subsidy payments and cross compliance

Anyone who claims under the Single Payment Scheme (SPS) including the attendant schemes, or has agreements under certain area related EU Rural Development (RD) schemes are expected to show, for the whole calendar year, that they have complied with the NVZ rules for all the land they have declared on the SPS claim form or that forms part of their RD Agri-environment Agreement holding.

The claimant is responsible for making sure that cross compliance requirements are met for the whole calendar year. This applies even if they are not in occupation of the land for the entire year. For example, if you claimed on some land which you then transferred out after 15 May, you would remain responsible for ensuring that the cross compliance requirements relating to that land were met until the end of the calendar year. From 2010 onwards there is one exception to this rule. If the person taking in the land (the transferee) in this case submits a claim in that calendar year, they will be liable for cross compliance breaches during the period that the land was at their disposal (for full details, see The [Guide to Cross Compliance in England](#)).

To minimise the risk of reductions being applied to claims, you are strongly advised to make sure that you consider NVZs in making any agreements concerning the land (see [Section 4](#) above).

Specific NVZ rules

This table describes the issues with each rule and how responsibilities might be shared.

Fertiliser planning

This rule applies before a crop is sown, or before permanent grass is fertilised after 1 January each year, i.e. over a period of months to one year, depending upon the crop.

The occupier must ensure that a plan is made, and hold the relevant records. If cropping is done by a contractor, the occupier should ensure that the rules are understood by the contractor and that relevant records are transferred.

If the land should change to another holding, details of the fertiliser plan and any applications already made should be transferred to the new occupier.

Livestock manure N farm limit

This rule applies over a calendar year.

The occupier must ensure that they know what types and numbers of relevant livestock have been

on the land, (including land to which a licensee has been given access, and land occupied by livestock taken in on tack), and the details of all spreading of manure from relevant livestock.

If land tenancy changes during the year, then the rule should be applied to that land on a *pro rata* basis for the time it is in the holding.

Farmers with outdoor pigs on land under tenancy should refer to their trade association for advice.

Organic manure N field limit

This rule applies over a rolling 12 month period.

The occupier must ensure that they know of all organic manure that has been spread on each field within the holding, and its total N content. This will include non-livestock manures that may be spread by the producer (for example, sewage sludge spread by the water company), and any applications in the previous 12 months if the land has been brought in from another holding.

N max

This rule applies over the duration of each crop, i.e. applies over a period of months to one year, depending upon the crop.

The occupier must ensure that N applied to a crop from manufactured N and livestock manure will not exceed the legal crop requirement. If cropping is done by a contractor, the occupier must ensure that this rule is followed and that relevant records are transferred.

If the land should change to another holding during the period of the crop, details of the fertiliser plan and any applications made should be transferred to the new occupier.

Closed periods

This rule applies between specified dates in autumn and winter.

The occupier must ensure no-one makes applications of organic manure with high readily available N or manufactured fertiliser on the holding, unless allowed by exemptions to the rules.

If the land should change to another holding during the closed period, details of any applications made under these exemptions should be transferred to the new occupier.

Manure storage

Specified dates for calculation of volume and provision of storage must be met.

The occupier must calculate the storage requirement for slurry from housed livestock, and ensure storage is provided for all manure in accordance with the rules including the use of impermeable surfaces and temporary field heaps.

Spreading controls

These rules apply at the time of spreading.

The occupier must ensure that any person carrying out spreading of manures or manufactured fertilisers complies with the relevant rules on spreading conditions, stand-off distances, trajectory and accuracy of spreading.

Records and risk maps

The rules say that records have to be available at set dates, but to do this data will need to be

collected over the preceding period of up to 12 months. If organic manure is to be spread, a risk map must be available by 1 January 2010.

The occupier must maintain records as required and will need to collect relevant information from licensees and contractors. Where a risk map is required, the occupier may need to make this available to licensees and contractors. The map must be updated when the holding is extended.