

**2003 No. 51**

**AGRICULTURE**

**WATER**

**The Action Programme for Nitrate Vulnerable Zones  
(Scotland) Regulations 2003**

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| <i>Made</i>                                | <i>28th January 2003</i>  |
| <i>Laid before the Scottish Parliament</i> | <i>30th January 2003</i>  |
| <i>Coming into force</i>                   | <i>20th February 2003</i> |

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(a)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003 and shall come into force on 20th February 2003.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“farm” means farm or livestock unit, and those expressions have same meaning as in Annex III, paragraph 2 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources<sup>(b)</sup>;

“nitrate vulnerable zone” means any area designated as a nitrate vulnerable zone by regulation 3(1) of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002<sup>(c)</sup> and regulation 3 of the Designation of Nitrate Vulnerable Zones (Scotland) (No.2) Regulations 2002<sup>(d)</sup>;

“occupier” means a person who occupies a farm all or part of which is in a nitrate vulnerable zone and for the purposes of these Regulations the occupier of a farm shall not cease to be the occupier of the whole of the farm by reason of another agricultural producer using part of the farm;

“the action programme” means the action programme set out in the Schedule to these Regulations;

“the 1998 Regulations” means the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 1998<sup>(e)</sup>.

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<sup>(a)</sup> 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

<sup>(b)</sup> O.J. No. L 375, 31.12.91, p.1.

<sup>(c)</sup> S.S.I. 2002/276.

<sup>(d)</sup> S.S.I. 2002/546.

<sup>(e)</sup> S.I. 1998/2927.

### **Implementation of action programme**

3. The occupier of a farm shall ensure that the action programme is implemented in relation to any part of the farm which is in a nitrate vulnerable zone.

### **Notice to remedy contravention of regulation 3**

4.—(1) Where the Scottish Ministers are of the opinion that a person—  
(a) is contravening a requirement imposed by Regulation 3 above in circumstances which make it likely that the contravention will continue;  
(b) has contravened such a requirement; or  
(c) has contravened such a requirement in circumstances which make it likely that the contravention will be repeated,  
they may serve a notice on that person in accordance with this regulation.

(2) A notice served in accordance with this regulation shall—  
(a) require the person upon whom it is served to carry out such works or to take such precautions and other steps as the Scottish Ministers consider appropriate in order to remedy, or to prevent the continuation or repetition of, any contravention to which the notice relates;  
(b) state the period within which any such requirement is to be complied with; and  
(c) inform the person on whom it is served of the provisions of Regulation 5 below.

(3) The period stated in the notice for compliance with any such requirement shall be such period as is reasonable in the circumstances and shall not in any case be a period of fewer than 28 days.

(4) The Scottish Ministers may at any time—  
(a) withdraw the notice;  
(b) extend the period for compliance with any requirement of the notice; or  
(c) modify the requirements of the notice:

Provided that such modification if not consented to, or made in consequence of a direction under Regulation 5(7) below, shall impose no greater burden on the person upon whom the notice is served than the requirements of the notice before modification.

### **Appeals against notices requiring works etc.**

5.—(1) A person served with a notice under Regulation 4 above may within the period of 28 days beginning with the day on which that notice is served appeal to the Scottish Land Court on the grounds set out in paragraph (3) below.

(2) An appeal shall be made by the appellant in such form as may be specified by the Scottish Land Court.

(3) An appeal may be made on one or more of the following grounds:—  
(a) that the contravention did not occur or is not likely to continue or recur;  
(b) that any requirement imposed by the notice is inadequately specified in it;  
(c) that any requirement imposed by the notice is not required to remedy, or to prevent the continuation or repetition of, the contravention to which the notice relates; or  
(d) that any requirement imposed by the notice is not appropriate to achieve compliance with the action programme and the appellant contends that any such requirement should be modified.

(4) Where an appellant contends that the notice should be modified, the grounds of appeal shall give such detail of the modification proposed as will adequately indicate the nature, extent and cost of the modification.

(5) The Scottish Land Court shall have power to make such rules as are necessary to regulate the procedure to be followed for disposal of appeals under this Regulation, which rules shall—  
(a) provide for intimation to SEPA as a potential respondent; and  
(b) require the Scottish Ministers to lodge answers.

(6) The Chairman of the Scottish Land Court may make such arrangements as are considered appropriate for the hearing of appeals under these Regulations and in particular may delegate to himself or herself, or to any Member of the Court, power to determine the whole or any part of an appeal.

(7) On determining an appeal under this Regulation the Court shall have power to direct the Scottish Ministers to withdraw the notice, to modify any of the requirements of the notice, to extend the period for compliance or to dismiss the appeal.

(8) The requirement to comply with a notice under Regulation 4 above shall be suspended until the date on which the Court finally intimates its determination of the appeal, or if the appeal is withdrawn, the date on which it is withdrawn.

### **Monitoring**

6.—(1) The occupier shall permit any person authorised by the Scottish Ministers (“the authorised person”), accompanied by such persons as appear to the authorised person to be necessary for the purpose, at all reasonable times, for the purpose of monitoring implementation of the action programme or of assessing its effectiveness in reducing water pollution caused or induced by nitrates from agricultural sources and preventing further such pollution—

- (a) to enter upon land;
- (b) to take samples;
- (c) to install and maintain equipment; or
- (d) to examine all records kept in implementation of the action programme.

(2) The occupier shall give all reasonable assistance to any person acting by virtue of paragraph (1) above and in particular shall—

- (a) produce for inspection such document or record as may be reasonably required by that person; and
- (b) at the reasonable request of that person, accompany that person in making any inspection of any land.

### **Offences**

7.—(1) Any person who fails to comply with a requirement imposed by regulation 3, or by a notice served on that person under regulation 4, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

(2) Any person who fails to comply with a requirement imposed by regulation 6 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### **Offences by directors, etc.**

8.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in such capacity,

that person, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purpose of paragraph (1) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations is committed by a partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

**Revocation, transitional and savings provisions**

9.—(1) Subject to paragraphs (2) to (3) below the 1998 Regulations are hereby revoked.

(2) Any notice served under regulation 4 of the 1998 Regulations before 20th February 2003 shall have effect, on and after that date, as if it had been served under Regulation 4 of these Regulations and these Regulations shall apply accordingly.

(3) Paragraph 15 of the Schedule to the 1998 Regulations shall continue to apply until 31st July 2003 and any records made for the purposes of that paragraph shall be retained for the period specified in paragraph 16 of the Schedule to the 1998 Regulations.

St Andrew's House,  
Edinburgh  
28th January 2003

*ROSS FINNIE*  
A member of the Scottish Executive

SCHEDULE  
ACTION PROGRAMME

1.—(1) In this Schedule—

“autumn sown crop” means—

- (a) a cover crop sown before 1st October and not removed (whether by mechanical cultivation, herbicide or grazing) before 1st December in the same year; and
- (b) a crop, not being a cover crop, sown between 1st August and 1st October in any year;

“chemical fertiliser” means nitrogen fertiliser which is manufactured by an industrial process;

“coastal waters” and “inland waters” have the same meaning as in section 30A(1) of the Control of Pollution Act 1974(a);

“cover crop” means a crop sown primarily for the purpose of taking up nitrogen from the soil and which is not harvested;

“crop requirement” means the amount of nitrogen fertiliser which it is reasonable to apply to land in any year having regard to the foreseeable nitrogen requirement of the crop growing or to be grown on the land and the nitrogen supply to the crop from the soil and from other sources, including any previous applications of livestock and other organic manures;

“fertiliser and manure plan” means a plan to assess the crop requirement for nitrogen fertiliser for each crop on each field each year and to establish the quantities of waste produced and safe methods of collection, storage and land-application;

“grassland” means land on which the vegetation consists predominantly of grass species;

“livestock” means any animal kept for use or profit;

“livestock manure” means waste products excreted by livestock or a mixture of litter and waste products excreted by livestock, even in processed form;

“nitrogen compound” means any nitrogen-containing substance other than gaseous molecular nitrogen;

“nitrogen fertiliser” means any substance containing a nitrogen compound utilised on land to enhance growth of vegetation;

“organic manure” means—

- (a) livestock manure; and
- (b) nitrogen fertiliser, not being livestock manure or chemical fertiliser, derived from organic matter,

and includes sewage sludge and other organic wastes;

“sandy” in relation to soil means sandy, sandy loamy and loamy sand soils where in the layer up to 40cm deep and in the layer between 40cm and 80cm deep, there is—

- (a) more than 50 per cent by weight of sand sized particles (that is particles more than 0.06mm and less than 2mm in diameter);
- (b) less than 18 per cent by weight of clay sized particles (that is particles less than 0.002mm in diameter); and
- (c) less than 5 per cent by weight of organic carbon;

“shallow” in relation to soil means less than 40cm deep;

“slurry” means—

- (a) excreta, including any liquid fraction, produced by livestock whilst in a yard or building; or
- (b) a mixture consisting wholly of or containing such excreta, bedding, feed residues, rainwater and washings from a building or yard used by livestock, dungsteeds or middens, high level slatted buildings and weeping wall structures or any combination of these, provided such excreta is present,

of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process;

“spring sown crop” means a crop sown between 1st February and 31st July in the same year;

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(a) 1974 c.40; section 30A was inserted by the Water Act 1989 (c.15), Schedule 23.

“year”, means, unless provided otherwise, any period of 12 months ending with 31st December,

and other expressions used in Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources<sup>(a)</sup> have the same meaning as in that Directive.

(2) For the purposes of this Schedule, material is applied to land where the material is added to the land whether by spreading on the surface of the land, injecting into the land, placing below the surface of the land or mixing with the surface layers of the land, and for the purposes of paragraph 10 below includes material deposited by livestock.

(3) In relation to a farm only part of which is in a nitrate vulnerable zone, references in this Schedule to a farm shall be taken as references to that part of the farm which is in the nitrate vulnerable zone.

2.—(1) Without prejudice to the specific provisions set out in paragraphs 3 to 16 below, the land application of nitrogen fertiliser shall take account of local environmental factors.

(2) For the purpose of paragraph (1) above, local environmental factors are—

- (a) soil conditions, type and slope;
- (b) climatic conditions, rainfall and irrigation; and
- (c) land use and agricultural practices, including crop rotation systems.

3. Nitrogen fertiliser shall not be applied to any land in excess of crop requirement, and without prejudice to that generality, account shall be taken of crop uptake and soil supply from organic matter, crop residues and organic manures.

4. A fertiliser and manure plan shall be prepared and implemented each year.

5.—(1) Subject to paragraph (4) below from 1st September 2003 a chemical fertiliser shall not be applied to land specified in paragraphs (2) and (3) below between the dates so specified in relation to that land.

(2) In relation to the area of land designated as the Moray, Aberdeenshire, Banff and Buchan nitrate vulnerable zone **(b)**, the land and dates specified for the purposes of paragraph (1) above are—

- (a) in the case of grassland, 15th September in any year and 20th February in the following year; and
- (b) in the case of other land, 1st September in any year and 20th February in the following year.

(3) In relation to areas of land designated as nitrate vulnerable zones other than the area of land mentioned in paragraph (2) above, the land and dates specified for the purposes of paragraph (1) above are—

- (a) in the case of grassland, 15th September in any year and 15th February in the following year; and
- (b) in the case of other land, 1st September in any year and 15th February in the following year.

(4) Subject to paragraph (5) below, where, in relation to any land, taking into account the characteristics of the crop and soil, the nitrogen requirement of the crop between the dates specified in paragraphs (2) and (3) above can only be met by applying fertiliser between those dates, the occupier may apply chemical fertiliser to that land between those dates.

(5) No later than 3 days after establishing that the nitrogen requirement of the crop can only be met by applying fertiliser between the dates specified in paragraphs (2) and (3) above, the occupier shall provide evidence to the Scottish Ministers as to—

- (a) the quantity of chemical fertiliser to be applied to the field, the nitrogen content of that chemical fertiliser and the date of the proposed application; and
- (b) why the nitrogen requirement of the crop can only be met by applying fertiliser between those dates.

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(a) O.J. No. L 375, 31.12.91, p.1.

(b) Designated as a nitrate vulnerable zone by regulation 3(1) of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002 (S.I. 2002/276).

- 6.** Nitrogen fertiliser shall be applied to land in as accurate and uniform a manner as is practicably possible consistent with good agricultural practice.
- 7.** Nitrogen fertiliser shall not be applied to steeply sloping fields in a manner which is inconsistent with good agricultural practice.
- 8.** Nitrogen fertiliser shall not be applied to any land if–
- (a) the soil is waterlogged;
  - (b) the land is flooded;
  - (c) the soil has been frozen for 12 hours or longer in the preceding 24 hours; or
  - (d) the land is covered by snow.
- 9.** Chemical fertiliser shall not be applied to any land in a location or manner that makes it likely that the chemical fertiliser will directly enter any inland or coastal waters.
- 10.—(1)** Without prejudice to paragraph 11 below, organic manure shall not be applied to land where the application would result in the total nitrogen in kilograms contained in organic manure applied in each year to land on the farm (including that deposited by animals whilst grazing) exceeding the specified amount calculated in accordance with paragraph (2) below.
- (2) For the purpose of paragraph (1) above, the specified amount is the sum of–
- (a) the number of hectares of grassland on the farm multiplied by 250kg; and
  - (b) the number of hectares of agricultural land other than grassland on the farm multiplied by 170kg.
- 11.** Organic manure shall not be applied to any field where the application would result in the total nitrogen in kilograms contained in organic manure applied in any 12 month period to any field exceeding a rate of 250kg per hectare.
- 12.** Organic manure shall not be applied to any land which is situated fewer than–
- (a) 10 metres from any inland or coastal waters; or
  - (b) 50 metres from any well, borehole or similar work sunk into underground strata for the purposes of any water supply.
- 13.** On or after 1st August 2003, organic manure in the form of slurry, poultry manure or liquid digested sewage sludge shall not be applied to any land that has a sandy or shallow soil–
- (a) between 1st October and 1st November in any year where the land is in grass or is to be sown with an autumn sown crop; or
  - (b) between 1st August and 1st November in any year in any other case.
- 14.** Field middens must be sited at least–
- (a) 10 metres from any inland or coastal waters; or
  - (b) 50 metres from any well, borehole or similar work sunk into underground strata for the purposes of any water supply.
- 15.** The capacity of storage vessels for livestock manure shall exceed the capacity required to store livestock manure produced throughout the longest period during which land application of livestock manure is prohibited by paragraph 13 above except where it can be demonstrated that any livestock manure in excess of the storage capacity will be disposed of in a manner which will not cause harm to the environment.
- 16.—(1)** Where any land on a farm has been used in any year to produce a leafy vegetable crop–
- (a) any further cultivation of that land prior to 1st December of that year shall be for autumn sown crops only;
  - (b) any preparation of that land for a spring crop shall not commence before 1st December of that year; and
  - (c) any unharvested residues of that crop shall be–
    - (i) removed from the nitrate vulnerable zone;
    - (ii) left in field and incorporated into the soil during cultivation for autumn sown crops;
    - (iii) by 1st October of that year, incorporated in field with a suitable binding material;or

(iv) left in field and incorporated into the soil during cultivation for the next spring sown crop.

(2) In paragraph (1) above—

“leafy vegetable crop” means a crop whose leaves or flowers are marketed as—

- (a) compact or loose vegetative organs; or
- (b) immature flowers;

“unharvested residues” of a leafy vegetable crop includes discarded stems and leaves and rejected vegetables; and

“a suitable binding material” means a cellulose-based binding material which shall have a carbon to nitrogen ratio exceeding 50:1.

**17.—**(1) Subject to paragraph (2) below, the occupier shall keep records which shall be sufficient to enable any person inspecting those records readily to ascertain—

- (a) the area of the farm;
- (b) any field which has sandy or shallow soils;
- (c) for each field comprised in the farm—
  - (i) the area of the field;
  - (ii) the quantity of any chemical fertiliser applied to the field, the nitrogen content of that chemical fertiliser and the date of application and, where fertiliser is applied under paragraph 5(4) above, the information specified in paragraph 5(5) above;
  - (iii) the quantity of any organic manure applied (other than by the animals themselves) to the field and the date of application;
  - (iv) whether organic manure applied to the field (other than by the animals themselves) was farmyard manure, poultry manure, slurry, sewage sludge or other organic manure; and
  - (v) the type of any crop grown and the date the crop is sown;
- (d) the number of livestock kept on the farm, their species and type, and the length of time for which they were kept on the farm;
- (e) the quantity of each type of livestock manure (whether farmyard manure, slurry, poultry manure, or other livestock manure) moved off the farm, the date of that movement and the name and address of the consignee;
- (f) the quantity of each type of livestock manure (whether farmyard manure, slurry, poultry manure, or other livestock manure) moved onto the farm, the date of that movement and the name and address of the consignor; and
- (g) the fertiliser and manure plan for the farm.

(2) The records referred to in sub-paragraph (1) above shall be kept for the period beginning with 1st August 2003 and ending with 18th December 2003, and thereafter shall be prepared on a yearly basis.

(3) For the purposes of this paragraph a year shall be the period of 12 months ending with 18th December.

**18.** Any record made for the purposes of paragraph 17 above shall be retained for a period of 5 years after the latest event recorded therein.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

**1.** These Regulations establish an action programme for the nitrate vulnerable zones which were designated in Scotland by regulation 3(1) of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002 (S.S.I. 2002/276) and regulation 3 of the Designation of Nitrate Vulnerable Zones (No. 2) (Scotland) Regulations 2002 (S.S.I. 2002/546). The Regulations further implement, as regards Scotland, the requirements in Article 5 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (O.J. No. L 375, 31.12.91, p.1) to establish such a programme for those zones.

**2.** Regulation 3 of these Regulations requires the occupier of a farm which is in a nitrate vulnerable zone to ensure that the action programme set out in the Schedule to the Regulations is implemented in relation to the part of the farm which is in the nitrate vulnerable zone.

**3.** These Regulations provide for monitoring of the action programme (regulation 6), for notices to be served requiring remedial action where there is, or has been, a contravention of the requirement in regulation 3 to ensure the action programme is implemented (regulation 4), and for a procedure to appeal against notices requiring remedial action (regulation 5).

**4.** Breaches of regulations 3, 4 and 6 are made criminal offences (regulation 7).

**5.** A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and copies can be obtained from the Water Environment Unit, Scottish Executive Rural Affairs Department (SEERAD), Victoria Quay, Leith EH6 6QQ.





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