

SCHEDULE

GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION

PART IV

Minimum level of maintenance and prevention of deterioration of habitats

Minimum livestock stocking rates and appropriate regimes

Undergrazing

10.—(1) A farmer must not allow undergrazing of land.

(2) Where undergrazing is identified by an authorised person, and the Scottish Ministers form the opinion that the land is undergrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.

(3) In establishing any undergrazing, land is not undergrazed if the land is capable of recovering to the extent that the use of the land or the growth, structure or species composition of grazed vegetation is no longer detrimental to the environmental or agricultural interest of the land by any time during the growing season in the calendar year following the date when the land first became undergrazed.

(4) In this paragraph, “undergrazing” means not using land fully or scrub or coarse vegetation becoming evident, where the use of the land or the growth, structure or species composition of grazed vegetation is detrimental to the environmental or agricultural interest of the land.

Overgrazing

11.—(1) Subject to sub-paragraph (2), a farmer must not allow overgrazing of land.

(2) Where a farmer can demonstrate to the satisfaction of the Scottish Ministers that appropriate action has been taken, he or she will not be taken to have allowed overgrazing, where the overgrazing was caused by—

- (a) an incursion of geese which could not be predicted;
- (b) an incursion of wild deer which could not be predicted, and in the case of an incursion of significant numbers of such deer the farmer can show that advice has been taken from Scottish Natural Heritage and that advice has been acted upon; or
- (c) rabbits, where the farmer can show that appropriate control methods have been used.

(3) Where overgrazing is identified by an authorised person, and the Scottish Ministers form the opinion that the land is overgrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.

(4) Subject to sub-paragraph (5), in this paragraph “overgrazing” means grazing land with livestock or other animals in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.

(5) There is no overgrazing for the purposes of this paragraph if the land is capable of recovering to the extent that the growth quality or species composition of vegetation would no longer be adversely affected to a significant degree by any time during the growing season in the calendar year after the land first became overgrazed.

Status: Point in time view as at 01/01/2012.

Changes to legislation: There are currently no known outstanding effects for the The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2011 (revoked), PART IV. (See end of Document for details)

Protection of permanent pasture

Pasture land of environmental or archaeological value

12.—(1) A farmer must not plough up pasture land of high environmental or archaeological value (whether species-rich grassland, machair habitat, pastoral woodland, heather moorland or otherwise) without all of the necessary consents or approvals required to permit that ploughing up.

(2) In this paragraph, “necessary consents or approvals” means—

- (a) the prior written consent of—
 - (i) subject to sub-paragraph (3), Scottish Natural Heritage for land within a site of special scientific interest;
 - (ii) the Scottish Ministers, for land under an agri-environment agreement in connection with support paid under Article 39 of Council Regulation 1698/2005 ^{M1};
- (b) approval under the EIA Agriculture Regulations; or
- (c) any consent or approval by or under any other enactment which would prohibit that ploughing up.

(3) This paragraph shall not apply where the necessary consent or approval would be the consent of Scottish Natural Heritage at a site of special scientific interest so designated in consequence of its status as a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 ^{M2}.

Marginal Citations

- M1** OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation (EC) No 473/2009, (OJ L 144, 9.6.2009, p.3).
- M2** S.I. 1994/2716, relevantly amended by S.S.I. 2007/80.

Works on rough grazings and other semi-natural areas

13.—(1) A farmer must not undertake new drainage works, plough up, clear, level, re-seed or cultivate rough grazings and other semi-natural areas without approval under the EIA Agriculture Regulations.

(2) In this paragraph and paragraph 14, “rough grazings and other semi-natural areas” means land containing semi-natural vegetation including heathland, heather moorland, bog, unimproved grassland and rough grassland which is used or suitable for grazing.

Pesticides, lime and fertiliser on rough grazings and other semi-natural areas

14. A farmer must not apply pesticides, lime or fertiliser to rough grazings and other semi-natural areas, except—

- (a) as approved under the EIA Agriculture Regulations;
- (b) in the case of lime or fertiliser, where no conservation damage to the diversity of species in those areas will result;
- (c) in the case of pesticides, to control injurious weeds to which the Weeds Act 1959 ^{M3} applies;
- (d) to control bracken with pesticides approved in accordance with the Control of Pesticides Regulations 1986 ^{M4} or the Plant Protection Products Regulations 2011 ^{M5}; or
- (e) to control other plants, subject to the prior written consent of the Scottish Ministers.

Marginal Citations

M3 1959 c.54.

M4 S.I. 1986/1510, as amended by S.I. 1997/188, S.I. 2001/880 and S.I. 2011/2131.

M5 S.I. 2011/2131.

Retention of landscape features

Boundary features

15.—(1) Subject to sub-paragraph (3), a farmer must not remove, destroy or damage drystone or flagstone dykes, turf and stone-faced banks, walls, hedges and hedgerow trees, boundary trees or watercourses which serve as boundaries to agricultural land, without the prior written consent of—

- (a) the Scottish Ministers; or
- (b) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) A farmer must not trim a hedge during the period beginning on 1st March and ending on 31st July in any calendar year, except—

- (a) for the purposes of hedgelaying up to and including 31st March; or
- (b) to the extent necessary for the purposes of road safety at any time during that period.

(3) Written consent under sub-paragraph (1) is not required to widen field entrances to enable access for livestock or farm machinery.

(4) In this paragraph “remove, destroy or damage” does not include—

- (a) trimming a hedge; or
- (b) lopping branches from hedgerow trees.

(5) In this paragraph, “hedgelaying” means a traditional method of cultivating hedges where tall saplings are partly cut through near the base and then bent over so that they lie horizontally and make a thick barrier.

Landscape features

16.—(1) A farmer must prevent the deterioration of non-productive landscape features on the land, including shelter belts, copses and ponds, except with the prior written consent of—

- (a) the Scottish Ministers; or
- (b) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) In this paragraph, “deterioration” means—

- (a) in relation to shelter belts and copses—
 - (i) not maintaining functional stock proof fences around those features; or
 - (ii) severe poaching, where feeding or other livestock husbandry practices have occurred within those features because the farmer has not reduced the livestock numbers so as to cause the turf to recover to the extent that there is no longer a predominantly muddy surface by any time during the growing season in the calendar year following the date when that severe poaching first occurred; or
- (b) not maintaining ponds on the holding by allowing eutrophication or by drainage.

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(3) In this paragraph “severe poaching” means the cutting up of turf to the destruction of the underlying vegetation leading to a predominantly muddy surface from trampling by livestock.

Protected historic environment

17. A farmer must not alter, or cause (whether directly or indirectly) the damage or destruction of—

- (a) a monument for the time being included in the Schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979^{M6}, without prior scheduled monument consent^{M7} within the meaning of that Act;
- (b) a listed building, within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997^{M8}, without prior listed building consent under section 7 of that Act; or
- (c) a historic garden or designed landscape, within the meaning of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008^{M9}, in respect of which consultation is required before any grant of planning permission under regulation 25 of, and Schedule 5 to, those Regulations.

Marginal Citations

M6 1979 c.46.

M7 Certain works (including agricultural, horticultural and forestry works) have scheduled monument consent by virtue of the [Ancient Monuments \(Class Consents\) \(Scotland\) Order 1996 \(S.I. 1996/1507\)](#).

M8 1997 c.9.

M9 S.S.I. 2008/432 as relevantly amended by S.S.I. 2011/377.

Avoiding the encroachment of unwanted vegetation on agricultural land

Encroachment of vegetation

18.—(1) Subject to sub-paragraph (2), a farmer must maintain land in a condition where vegetation does not encroach onto the land to the point that the land is not capable of—

- (a) being used for the production of agricultural products; or
- (b) being put in that condition by any time during the growing season in the calendar year following the date when the encroachment occurred.

(2) In respect of land managed under an agri-environmental scheme funded under the Scotland Rural Development Programme 2007 to 2013, the requirement in sub-paragraph (1) does not apply—

- (a) to the encroachment of native species in the case of—
 - (i) the recolonisation of trees across a native woodland boundary;
 - (ii) the recolonisation of gorse, birch and juniper sub-species, to the extent that it forms an area of mixed habitats; or
 - (iii) the reversion of land to wet grassland or wetland; or
- (b) where there is no degradation of the environmental and agricultural value of the land and the farmer has, prior to that encroachment, declared the environmental gain to be achieved—
 - (i) in the farmer's aid application submitted under Article 19 of the Council Regulation; or
 - (ii) in any other prior application submitted for a direct payment.

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