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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 412**

**The Water Environment (Controlled Activities)  
(Scotland) Amendment Regulations 2021**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021.

(2) With the exception of the provisions mentioned in paragraph (3), these Regulations come into force on 1 January 2022.

(3) Regulation 3(4)(j) and regulation 4 come into force on 1 January 2023.

**Interpretation**

2.—(1) In these Regulations—

- (a) the “2003 Regulations” means the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(1),
- (b) the “2011 Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011(2),
- (c) “nitrate vulnerable zone” means any area of land designated as a nitrate vulnerable zone by regulation 2 of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015(3).

(2) Any other word or expression used in these Regulations which is also used in the 2011 Regulations has the same meaning as in Part 2 of schedule 3 of the 2011 Regulations.

**Amendment of the 2011 Regulations**

3.—(1) The 2011 Regulations are amended as follows.

(2) In regulation 3 (application of the regulations)—

- (a) at the start of paragraph (1), omit “Subject to paragraph (2),”,
- (b) for paragraph (1)(c) substitute—
  - “(c) construction or alteration of impounding works in inland water (other than groundwater) or wetlands,
  - (cc) operation of impounding works in surface water or wetlands”,
- (c) in paragraph (d), after “in paragraph (c)” insert “or (cc)”,
- (d) for paragraph (2) substitute—

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(1) S.S.I. 2003/531, as amended by S.S.I. 2006/133, S.S.I. 2008/54 and S.S.I. 2013/177.

(2) S.S.I. 2011/209, as amended by S.S.I. 2011/415, S.S.I. 2012/360, S.S.I. 2013/176, S.S.I. 2013/323, S.S.I. 2013/325, S.S.I. 2014/373, S.S.I. 2015/211, S.S.I. 2016/19, S.S.I. 2017/114, S.S.I. 2017/389, S.S.I. 2018/219, S.S.I. 2019/26 and S.S.I. 2019/175.

(3) S.S.I. 2015/376.

“(2) These Regulations do not apply to the discharge of any reagent or chemical or particle tracer used in connection with any scientific experiment or survey in transitional waters or coastal waters.”,

(3) In regulation 36 (power of the Scottish Ministers and SEPA to obtain information), in paragraph (3), for “must include” substitute “includes”.

(4) In Part 1 of schedule 3 (general binding rules)—

(a) in the entry relating to activity 5—

(i) in column 1, for paragraph (a) substitute—

“(a) has an average bed width of less than one metre along the stretch to be worked,”,

(ii) in column 2, in paragraph (c) after “of the” insert “ bed width of the”,

(b) in the entry relating to activity 6, in column 1, in paragraph (b) for “channel” substitute “bed”,

(c) in the entry relating to activity 8, in column 2—

(i) in paragraph (e), before “geotextiles” insert “biodegradable”,

(ii) in paragraph (i), after “heightening” insert “or lowering”,

(d) in the entry relating to activity 9, in column 2, in paragraph (c) for “tank”, in the second place it occurs, substitute “plant”,

(e) for the entry relating to activity 10 substitute—

<p>“<b>10A.</b> The discharge of water run-off from a surface water drainage system to the water environment from buildings, roads other than waterbound roads, yards, or any other built development constructed before 1 April 2007, with the exception of run-off from any motorway or trunk road where—</p> <p>(i) any one outfall serves a length of road greater than 1km, and</p> <p>(ii) the footprint of the road or its associated infrastructure is enlarged or otherwise altered on or after 1 April 2007.</p>	<p>(a) All reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment,</p> <p>(b) the discharge must not—</p> <p>(i) contain any trade effluent or domestic sewage,</p> <p>(ii) result in visible discolouration, iridescence, foaming or sewage fungus in the water environment, or</p> <p>(iii) contain any water run-off from a construction site,</p> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water,</p> <p>(d) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, must be maintained in good order and repair,</p> <p>(e) all reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.</p>
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<p><b>10B.</b> The discharge of water run-off from a surface water drainage system to the water environment from buildings, roads other than waterbound roads, yards, or any other built development constructed on or after 1 April 2007, with the exception of run-off from—</p> <ul style="list-style-type: none"> <li>(i) land of more than 30 hectares which is used for residential premises,</li> <li>(ii) industrial estates,</li> <li>(iii) land used as a motorised vehicle parking area with more than 1,000 parking spaces,</li> <li>(iv) motorways and trunk roads where any one outfall serves a length of road greater than 1km.</li> </ul>	<ul style="list-style-type: none"> <li>(a) All reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment,</li> <li>(b) the discharge must not— <ul style="list-style-type: none"> <li>(i) contain any trade effluent or domestic sewage,</li> <li>(ii) result in visible discolouration, iridescence, foaming or sewage fungus in the water environment, or</li> <li>(iii) contain any water run-off from a construction site,</li> </ul> </li> <li>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water,</li> <li>(d) the development must be drained by a SUD system equipped to avoid pollution of the water environment, unless— <ul style="list-style-type: none"> <li>(i) the run-off is from a development that is a single dwelling and its curtilage, or</li> <li>(ii) the discharge is to coastal water,</li> </ul> </li> <li>(e) the discharge must not contain any water run-off from— <ul style="list-style-type: none"> <li>(i) any fuel delivery areas constructed on or after 1 April 2007, or any areas where vehicles, plant and equipment are refuelled constructed on or after 1 April 2007,</li> <li>(ii) vehicle loading or unloading bays constructed on or after 1 April 2007 where potentially polluting matter is handled, or</li> <li>(iii) oil and chemical storage handling and delivery areas constructed on or after 1 April 2007,</li> </ul> </li> <li>(f) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, must be maintained in good order and repair,</li> <li>(g) all reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.</li> </ul>
<p><b>10C.</b> The discharge of water run-off from a quarry or borrow pit constructed on or after 1 January 2022.</p>	<ul style="list-style-type: none"> <li>(a) All reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment,</li> </ul>

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	<ul style="list-style-type: none"> <li>(b) the discharge must not—             <ul style="list-style-type: none"> <li>(i) contain any trade effluent or domestic sewage, or</li> <li>(ii) result in visible discolouration, iridescence, foaming or sewage fungus in the water environment,</li> </ul> </li> <li>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water,</li> <li>(d) the discharge must not contain any water run-off from—             <ul style="list-style-type: none"> <li>(i) any fuel delivery areas constructed on or after 1 April 2007, or any areas where vehicles, plant and equipment are refuelled constructed on or after 1 April 2007,</li> <li>(ii) vehicle loading or unloading bays constructed on or after 1 April 2007 where potentially polluting matter is handled, or</li> <li>(iii) oil and chemical storage handling and delivery areas constructed on or after 1 April 2007,</li> </ul> </li> <li>(e) the quarry or borrow pit must be drained by a SUD system or equivalent system equipped to avoid pollution of the water environment,</li> <li>(f) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, must be maintained in good order and repair,</li> <li>(g) all reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.</li> </ul>
<p><b>10D.</b> The discharge of water run-off from a construction site to the water environment where the site, including any constructed access tracks, does not—</p> <ul style="list-style-type: none"> <li>(i) exceed 4 hectares,</li> <li>(ii) contain a road or track length in excess of 5km, or</li> <li>(iii) include any area of more than 1 hectare or any length of more than 500 metres on ground with a slope in excess of 25°.</li> </ul>	<ul style="list-style-type: none"> <li>(a) All reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment,</li> <li>(b) the discharge must not—             <ul style="list-style-type: none"> <li>(i) contain any trade effluent or domestic sewage, or</li> <li>(ii) result in visible discolouration, iridescence, foaming or sewage fungus in the water environment,</li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water,</li><li>(d) the discharge must not contain any water run-off from any built developments, unless during construction those developments are drained by a SUD system or equivalent system equipped to avoid pollution of the water environment,</li><li>(e) the discharge must not contain any water run-off from—<ul style="list-style-type: none"><li>(i) any fuel delivery areas constructed on or after 1 April 2007, or any areas where vehicles, plant and equipment are refuelled constructed on or after 1 April 2007,</li><li>(ii) vehicle loading or unloading bays constructed on or after 1 April 2007 where potentially polluting matter is handled, or</li><li>(iii) oil and chemical storage handling and delivery areas constructed on or after 1 April 2007,</li></ul></li><li>(f) all parts of a construction site on which—<ul style="list-style-type: none"><li>(i) operations first commenced on or after 1 June 2018, and</li><li>(ii) any works are to be undertaken, or any vehicles are to be operated or parked,</li></ul>must be drained by a surface water drainage system with capacity to accommodate the maximum volume of run-off that would reasonably be expected to occur from that land during the period of construction,</li><li>(g) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, must be maintained in good order and repair,</li><li>(h) all reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.”,</li></ul>
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(f) in the entry relating to activity 11, in column 2—

- (i) at the start of paragraph (c) insert “domestic” before “sewage”,
- (ii) in paragraph (d) for “10” substitute “10D”,
- (g) in the entry relating to activity 14, in column 2, in paragraphs (a), (b) and (c) for “channel”, in each place it occurs, substitute “bed”,
- (h) in the entry relating to activity 15, in column 2—
  - (i) for paragraph (b) substitute—
    - “(b) other than where paragraph (g)(i) applies, groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of any surface water unless the abstracted water is discharged into the surface water at the nearest part of the surface water to the point of abstraction and in accordance with paragraph (f) or (g)(ii), as applicable,”
  - (ii) at the end of paragraph (e) omit “and”,
  - (iii) in paragraph (f) for “and, if it is pumped directly from an excavation,” substitute “is taken directly from an excavation and this water, and”,
  - (iv) after paragraph (f) insert—
    - “(g) if the abstracted groundwater is taken from a borehole or well, and is discharged to the water environment, it must be—
      - (i) discharged directly back to the same part of the geological formation or the mine workings from which it was abstracted, provided that the abstracted water does not contain any radioactive substance, and that no substances are added to, or otherwise allowed to enter, the abstracted water prior to its return, or
      - (ii) discharged via a surface water drainage system authorised under these Regulations subject to the consent of the person having control of the system,
    - (h) all reasonable steps must be taken to ensure that the discharge of abstracted groundwater does not result in pollution of the water environment.”
- (i) in the entry relating to activity 18—
  - (i) in column 1, for paragraph (a) substitute—
    - “(a) The storage of fertiliser unless—
      - (i) the storage is regulated by a waste management licence in terms of section 35 (waste management licence: general) of the Environmental Protection Act 1990<sup>(4)</sup>,
      - (ii) it is an activity specified at activities 31, 32 or 34 of column 1 of this schedule,”
  - (ii) in column 2—
    - (aa) omit paragraph (b),
    - (bb) in paragraph (c) omit “liquid digestate or” and “digestate or”,
    - (cc) after paragraph (l) omit “and”,
    - (dd) after paragraph (m) insert—

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(4) 1990 c. 43. Section 35 has been amended by section 120 and paragraph 66 of schedule 22 of the Environment Act 1995 (c. 25), section 57 and paragraph 3 of schedule 3 of the Regulatory Reform (Scotland) Act 2014 (asp 3), S.S.I. 2000/323 and S.S.I. 2011/226.

- (n) “where organic fertilisers are to be applied to land—
- (i) a risk assessment must be carried out in respect of that land, including the preparation of a map of the farm which clearly shows—
    - (1) the delineation of every field,
    - (2) the area of every field in hectares,
    - (3) the location of all surface water, springs, wells, boreholes storage tanks or any other structures sunk into underground strata for the purpose of providing a water supply,
    - (4) any area of land with a slope of 12 degrees or more,
    - (5) the location of any field heaps,
    - (6) areas where organic fertiliser must not be applied in accordance with paragraph (g)(i), (ii), (iii) and (v), and
    - (7) any other area of high risk to the water environment,
  - (ii) the person carrying out the application of organic fertilisers must be provided with the map for the area to which fertiliser is being applied,
  - (iii) field heaps of organic fertilisers must not be located in any area identified on the map in accordance with paragraph (i)(3), (6) or (7),”

(j) in the entry relating to activity 18, in column 2, after paragraph (n) insert—

(o) “slurry and liquid digestate must be applied using precision equipment.”

(k) in the entry relating to activity 21, in column 1 for “activity 10 and the rules related to it” substitute “activities 10A, 10B, 10C and 10D, and the rules related to them”,

(l) for the entry relating to activity 22, substitute—

<p>“22. The discharge of surface water from waterbound roads and tracks to the water environment, including during the construction and maintenance of such roads and tracks.</p>	<ul style="list-style-type: none"> <li>(a) All reasonable steps must be taken to ensure that any discharge does not result in pollution of the water environment,</li> <li>(b) any discharge must not result in visible discolouration, iridescence, foaming or sewage fungus in the water environment, and</li> <li>(c) any discharge must not result in the destabilisation of the banks or bed of the receiving surface water.”</li> </ul>
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(m) in the entry relating to activity 25—

(i) for the description of the activity in column 1, substitute “The placement of trees or parts of trees in any river, burn or ditch to protect eroding banks.”,

(ii) in column 2, in paragraph (e)(i), for “the river” substitute “any part of the river, burn or ditch”,

(iii) in column 2, in paragraph (f)(i), for “the willow” substitute “trees or the placement of trees or parts of trees”,

(iv) in column 2, in paragraph (f)(ii), for “willow has” substitute “trees have”,

(n) in the entry relating to activity 27, in the description of the activity in column 1, for “for residential purposes” substitute “as a private dwelling”,

(o) in the entry relating to activity 28, in column 2—

(i) in paragraph (f)(vii)3—

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- (aa) in sub-paragraph (b) omit “the pipe must”,
- (bb) in sub-paragraph (c) for “the premises in which the pipe is situated must” substitute “be situated in premises which”,
- (ii) at the start of paragraph (f)(vii)4, insert “where sub-paragraph 3(b) or (c) applies,”,
- (iii) in paragraph (f)(viii)1, after “valve” insert “or an isolating device”,
- (p) after the entry relating to activity 28, insert—

<p><b>29.</b> The making and storage of silage in bales or bulk bags.</p>	<ul style="list-style-type: none"> <li>(a) The bales or bulk bags must not be stored, opened, or unwrapped within 10 metres of any— <ul style="list-style-type: none"> <li>(i) river, burn, ditch or loch, as measured from the top of the bank,</li> <li>(ii) wetland,</li> <li>(iii) transitional water or coastal water, as measured from the shoreline, or</li> <li>(iv) opening into a surface water drain which silage effluent could enter if it were to escape,</li> </ul> </li> <li>(b) the bulk bags must— <ul style="list-style-type: none"> <li>(i) have an impermeable membrane,</li> <li>(ii) be resealed when not in use, to prevent the escape of silage effluent,</li> <li>(iii) incorporate a facility to enable the removal of any excess effluent without spillage, and</li> <li>(iv) be situated on a firm level surface,</li> </ul> </li> <li>(c) the bales must be wrapped and sealed into impermeable membranes or enclosed in impermeable bags.</li> </ul>
<p><b>30.</b> The treatment of silage effluent which consists mainly of rainwater by draining it from a silo through a constructed farm wetland.</p>	<p>Silage effluent which consists mainly of rainwater may be drained through a constructed farm wetland only if—</p> <ul style="list-style-type: none"> <li>(a) the silo is open for use,</li> <li>(b) the drainage of the silage effluent from the silo to the constructed farm wetland is direct and through a separate channel or pipe from the base of the silo,</li> <li>(c) no crop is added to the silo whilst it is open.</li> </ul>
<p><b>31.</b> The making and storage of silage other than in bales or bulk bags.</p>	<ul style="list-style-type: none"> <li>(a) Silage must be made and stored in a silo which— <ul style="list-style-type: none"> <li>(i) complies with paragraphs (b) to (g),</li> <li>(ii) if constructed, or substantially reconstructed or enlarged, on or after 1 September 1991, in addition to paragraph (a)(i), complies with paragraphs (h) to (j)</li> </ul> </li> </ul>



- (iii) if new (including a silo constructed from used materials), or substantially reconstructed or enlarged, on or after 1 January 2022, has a life expectancy of at least 20 years, with proper maintenance, from its construction, reconstruction or enlargement,
- (b) the base of the silo must be constructed with channels to collect silage effluent from the silo, and with channels or pipes which must drain any such silage effluent to an effluent tank,
- (c) the capacity of the effluent tank must be at least—
  - (i) for a silo with a capacity of less than 1500m<sup>3</sup>, 20 litres for every 1m<sup>3</sup> of silo capacity, or
  - (ii) for a silo with a capacity of 1500m<sup>3</sup> or greater, 30,000 litres, plus 6.7 litres for every 1m<sup>3</sup> of silo capacity over 1500m<sup>3</sup>,
- (d) where the effluent collection system associated with the silo incorporates a system of pumps and sumps, it must be fitted with an automatic overflow prevention device with a dedicated electrical supply and an alarm,
- (e) the base of the silo, the base and walls of its effluent tank and channels, and the walls of any pipes must be impermeable,
- (f) the base and any walls of the silo, its effluent tank and channels, and the walls of any pipes must, so far as reasonably practicable, be resistant to attack by silage effluent and, where the walls are made of earth, they must be lined with an impermeable membrane of 1000 gauge polyethylene or a material of at least equivalent impermeability and durability,
- (g) if the silo has retaining walls which are not made of earth, the stored silage level within that silo once compacted must be no greater than the height of the retaining wall,
- (h) the base of any silo constructed, or substantially reconstructed or enlarged, on or after 1 September 1991 must, in addition to paragraph (b)—
  - (i) comply with British Standard EN 1992-3:2006(5) and British

- Standard EN-1-1-2004 +A1:2014 (for concrete bases)<sup>(6)</sup>, or British Standard EN 13108-4:2016 (for hot-rolled asphalt bases)<sup>(7)</sup>,
- (ii) where the silo has retaining walls made other than of earth, extend beyond those walls,
- (i) where any part of an effluent tank constructed, or substantially reconstructed or enlarged, on or after 1 September 1991 is installed below ground level, it must be designed and constructed in accordance with the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-22:2003+A1:2013<sup>(8)</sup>,
- (j) a silo constructed, or substantially reconstructed or enlarged, on or after 1 September 1991, which has retaining walls which are not made of earth, must have retaining walls capable of withstanding the minimum wall loadings calculated in accordance with the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-22:2003+A1:2013,
- (k) a silo constructed (including from used materials), or substantially reconstructed or enlarged, on or after 1 January 2022, which has retaining walls which are not made of earth, must have the maximum loadings of the silo visibly displayed on it,
- (l) a silo, its effluent tank, channels and any associated pipes constructed on or after 1 January 2022 must not be situated within 10 metres of any surface water or opening into a surface water drain which silage effluent could enter if it were to escape,
- (m) the silo, its effluent tank, channel and pipes must be operationally maintained to be free of any structural defects during its lifecycle,
- (n) the silo must not be filled beyond the drainage channel,

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<sup>(6)</sup> Published by the British Standards Institution on 23 December 2004 (ISBN 978-0-580-83726-5).

<sup>(7)</sup> Published by the British Standards Institution on 28 February 2018 (ISBN 978-0-580-52033-4).

<sup>(8)</sup> Publication date: 10 June 2003. ISBN 978-0-580-78768-3.

	<p>(o) where a silo or effluent tank is to be constructed or to be substantially rebuilt or enlarged—</p> <ul style="list-style-type: none"> <li>(i) the operator must notify SEPA no later than 30 days prior to commencing the works,</li> <li>(ii) the notification under sub-paragraph (i) must be accompanied by an engineering plan for the works to be carried out,</li> <li>(iii) the operator must retain the engineer’s final sign-off certificate for the works for the lifetime of the silo or effluent tank, for inspection by SEPA on request.</li> </ul>
<p>32. The storage of slurry.</p>	<ul style="list-style-type: none"> <li>(a) Where slurry is produced on the farm by housed livestock, the slurry must be stored in a slurry storage system, liquid digestate storage system, or slurry bags which have sufficient capacity to store the total quantity of slurry likely to be produced in— <ul style="list-style-type: none"> <li>(i) 26 weeks by housed pigs, or</li> <li>(ii) 22 weeks by housed cattle, taking account of any additional inputs to or exports from the storage as described in paragraph (c),</li> </ul> </li> <li>(b) the total quantity of slurry referred to in paragraph (a) is to be calculated by adding up the figures produced for each type of livestock, as applicable, in accordance with the formula for housed pigs or housed cattle, contained in regulation 7(2) of the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008<sup>(9)</sup>,</li> <li>(c) in calculating the minimum storage capacity necessary to comply with paragraph (a), the following figures must be included in respect of the relevant 26 or 22 week period— <ul style="list-style-type: none"> <li>(i) the quantity of any rainfall (including any fall of snow, hail or sleet) that is likely to enter the system (directly or indirectly) including from dungsteads, silage pits or dirty yards,</li> <li>(ii) the quantity of any cleaning water that is likely to enter the system or slurry bag,</li> </ul> </li> </ul>

<sup>(9)</sup> S.S.I. 2008/298, as amended by S.S.I. 2008/394, S.S.I. 2009/447, S.S.I. 2011/228, S.S.I. 2012/360, S.S.I. 2013/123 and S.S.I. 2015/376.

- (iii) the likely quantity of any imported slurries and liquid digestate added to the system or slurry bag,
  - (iv) the quantity of any slurry exported off farm,
- (d) where slurry is imported onto the farm, there must be sufficient storage capacity on the farm to store the quantities imported during periods when application is not authorised under activity 18 of column 1 of this schedule or would not comply with the requirements of the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008,
- (e) the capacity of any facility used for the temporary storage of slurry before it is transferred to a slurry storage tank must be the equivalent of at least 1.5% of the minimum on farm storage capacity in accordance with paragraph (a),
- (f) the slurry storage system must—
  - (i) comply with paragraphs (g) to (l),
  - (ii) where constructed, or substantially reconstructed or enlarged, on or after 1 September 1991, comply, in addition to paragraph (f)(i), with paragraphs (m) and (n),
  - (iii) if new (including systems constructed from used materials), substantially reconstructed or enlarged, on or after 1 January 2022, have a life expectancy of at least 20 years with proper maintenance, from its construction, reconstruction or enlargement,
- (g) the base and walls of any slurry storage tank, any channels and reception pit, and the walls of any pipes, must be impermeable (except where the conditions in paragraph (j) are complied with) and free from any cracks or structural defects,
- (h) where slurry flows into a channel before discharging into a reception pit, and the flow is controlled by means of a sluice or valve, the capacity of the reception pit must be sufficient to store the maximum quantity of slurry which can be released by opening the sluice or valve,
- (i) the slurry storage tank, channels, pipes, valves, and reception pit must be operationally maintained to be free

- of any structural defects during their lifecycle,
- (j) where the walls of the slurry storage tank are not impermeable—
  - (i) the base of the tank must extend beyond its walls and be provided with channels designed and constructed so as to collect any slurry which may escape from the tank,
  - (ii) the tank must have adequate provision to collect, drain and store slurry from the channels to a slurry storage system,
- (k) where the slurry storage tank or reception pit is fitted with a drainage pipe—
  - (i) there must be two valves in series on the pipe and each valve must be capable of stopping the flow of slurry through the pipe and must be kept shut and locked in that position when not in use,
  - (ii) sub-paragraph (i) does not apply in relation to a slurry storage tank which drains through the pipe into another slurry storage tank of equal or greater capacity or where the tops of the tanks are at the same level,
- (l) where a slurry storage system has walls which are made of earth, the system must not be filled to a level which allows less than 750 millimetres of freeboard, and in all other cases the slurry storage tank must not be filled to a level which allows less than 300 millimetres of freeboard,
- (m) the base and walls of any slurry storage tank, channels and reception pit, valves, and the walls of any pipes, constructed, or substantially reconstructed or enlarged, on or after 1 September 1991 must be protected against corrosion in accordance with paragraph 7.2 of the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-50:1993+A2:2010(10),
- (n) the base and walls of any slurry storage tank and any reception pit constructed, or

- substantially reconstructed or enlarged, on or after 1 September 1991, must be capable of withstanding characteristic loads calculated on the assumptions and in the manner as set out in paragraph 5 of the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-50:1993+A2:2010,
- (o) any slurry storage system, constructed, or substantially reconstructed or enlarged, on or after 1 January 2022, which has walls made of earth, must be lined with an impermeable sheet material which, with proper maintenance, slurry cannot permeate for a period of at least 20 years,
- (p) a slurry storage system constructed on or after 1 January 2022 must not be situated within 10 metres of any surface water or opening into a surface water drain which slurry could enter into if it were to escape,
- (q) a slurry bag may only be used to store slurry if—
- (i) the bag is constructed of impermeable material of sufficient strength and structural integrity such that it is unlikely to burst or leak in its ordinary use, and
  - (ii) it is situated in a bund which complies with the following requirements—
    - (1) the bund must be of at least equivalent capacity to the slurry bag,
    - (2) the bund must be lined with an impermeable sheet material which, with proper maintenance, slurry cannot permeate for a period of at least 20 years,
    - (3) the bund must have a means of removing rainwater, and
    - (4) other than as necessary to allow rainwater to be removed, the base and walls of the bund must not be penetrated by any valve, pipe or other opening,
- (r) where a slurry storage system (including a reception pit or channels) is to be

	<p>constructed or to be substantially rebuilt or enlarged—</p> <ul style="list-style-type: none"> <li>(i) the operator must notify SEPA no later than 30 days prior to commencing the works,</li> <li>(ii) the notification under subparagraph (i) must be accompanied by an engineering plan for the works to be carried out,</li> <li>(iii) the operator must retain the engineer’s final sign-off certificate for the works for the lifetime of the slurry storage system, for inspection by SEPA on request,</li> </ul> <p>(s) slurry may be stored in a liquid digestate storage system which complies with the rules in column 2 of activity 34 of this schedule in relation to the storage of liquid digestate.</p>
<p><b>33.</b> The treatment of slurry which consists mainly of rainwater and washings by draining through a constructed farm wetland.</p>	<ul style="list-style-type: none"> <li>(a) Slurry may be drained through a constructed farm wetland only if it consists mainly of rainwater and washings which derive from— <ul style="list-style-type: none"> <li>(i) a midden which mainly contains farm yard manure and is situated where its contents can be affected directly by precipitation,</li> <li>(ii) any uncovered yard, used by livestock to move from one area to another but not including areas covered by paragraph (b),</li> <li>(iii) a yard which is used for the gathering or holding of livestock no more than once a week and which can be directly affected by precipitation,</li> </ul> </li> <li>(b) slurry must not be drained through a constructed farm wetland from areas— <ul style="list-style-type: none"> <li>(i) where livestock are gathered or held more than once a week, or</li> <li>(ii) used for livestock movement or holding prior to, during or after being— <ul style="list-style-type: none"> <li>(1) milked,</li> <li>(2) housed, or</li> <li>(3) fed,</li> </ul> </li> </ul> </li> <li>(c) slurry which contains pesticide must not be drained through a constructed farm wetland,</li> <li>(d) all reasonable steps must be taken to ensure that the drainage of slurry through a constructed farm wetland</li> </ul>

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

	does not cause pollution of the water environment.
<p><b>34.</b> Storage of liquid digestate unless the storage is regulated by—</p> <p>(a) a waste management licence in terms of section 35 of the Environmental Protection Act 1990(11),</p> <p>(b) the registration of a registered exemption under the Waste Management Licensing (Scotland) Regulations 2011(12),</p> <p>(c) a permit in terms of regulation 11 of the Pollution Prevention and Control (Scotland) Regulations 2012(13).</p>	<p>(a) Where liquid digestate is produced on the farm, it must be stored in a liquid digestate storage system, slurry storage system or slurry bag which has sufficient capacity to accommodate the volume of liquid digestate produced during periods when application is not authorised under activity 18 of column 1 of this schedule or would not comply with the requirements of the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008,</p> <p>(b) where liquid digestate is imported onto a farm, it must be stored in a liquid digestate storage system, slurry storage system or slurry bag which has sufficient capacity to store the quantities imported during periods when application is not authorised under activity 18 of column 1 of this schedule or would not comply with the requirements of the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008,</p> <p>(c) in calculating the required storage capacity, the following figures must be included—</p> <p>(i) the quantity of any rainfall (including any fall of snow, hail or sleet that is likely to enter the system or slurry bag (directly or indirectly) including from dungsteeds, silage pits or dirty yards,</p> <p>(ii) the quantity of any cleaning water that is likely to enter the system or slurry bag,</p> <p>(iii) the quantity of any slurry from housed livestock,</p> <p>(iv) the likely quantity of any imported slurries and liquid digestate added to the system or slurry bag,</p> <p>(v) the quantity of any liquid digestate exported off farm,</p> <p>(d) a liquid digestate storage system must,</p> <p>(i) comply with paragraphs (e) to (k),</p>

(11) 1990 c. 43, as amended by paragraph 66 of schedule 22 of the Environment Act 1995, paragraph 3 of schedule 3 of the Regulatory Reform (Scotland) Act 2014, [S.S.I. 2000/323](#) and [S.S.I. 2011/226](#).

(12) [S.S.I. 2011/228](#), as relevantly amended by [S.S.I. 2012/148](#), [S.S.I. 2018/391](#) and [S.S.I. 2019/26](#).

(13) [S.S.I. 2012/360](#), to which there are amendments not relevant to these Regulations.



- (ii) if new (including systems constructed from used materials), or substantially reconstructed or enlarged, on or after 1 January 2022, have a life expectancy of at least 20 years, with proper maintenance, from its construction, reconstruction or enlargement,
- (e) the base and walls of the liquid digestate storage tank and the walls of any feedstock tank, channels and pipes must be impermeable,
- (f) the base and walls of the liquid digestate storage tank and feedstock tank, valves and the walls of any pipes must be protected against corrosion in accordance with paragraph 7.2 of the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-50:1993+A2:2010(14),
- (g) the base and walls of the liquid digestate storage tank and any feedstock tank must be capable of withstanding characteristic loads calculated on the assumptions and in the manner as set out in paragraph 5 of the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502-50:1993+A2:2010,
- (h) the liquid digestate storage system must not be situated within 10 metres of any surface water or opening into a surface water drain which liquid digestate could enter if it were to escape,
- (i) the liquid digestate tank, pipes, valves and feedstock tank must be operationally maintained to be free of any structural defects during their lifecycle,
- (j) where the liquid digestate storage tank is fitted with a drainage pipe—
  - (i) there must be two valves in series on the pipe and each valve must be capable of stopping the flow of liquid digestate through the pipe and must be kept shut and locked in that position when not in use,
  - (ii) sub-paragraph (i) does not apply in relation to a liquid digestate storage tank which drains through the

- pipe into another liquid digestate storage tank of equal or greater capacity or where the tops of the tanks are at the same level,
- (k) where a liquid digestate storage system includes a lagoon with walls which are made of earth, the lagoon must not be filled to a level which allows less than 750 millimetres of freeboard, and in all other cases the liquid digestate storage tank must not be filled to a level which allows less than 300 millimetres of freeboard,
  - (l) where a liquid digestate storage system constructed, or substantially reconstructed or enlarged, on or after 1 January 2022 includes a lagoon with walls which are made of earth, the lagoon must be lined with an impermeable sheet material which, with proper maintenance, liquid digestate cannot permeate for a period of at least 20 years,
  - (m) a slurry bag may only be used to store liquid digestate if—
    - (i) the bag is constructed of impermeable material, is of sufficient strength and structural integrity, and is unlikely to burst or leak in its ordinary use, and
    - (ii) it is situated in a bund which complies with the following requirements—
      - (1) the bund must be of at least equivalent capacity to the slurry bag,
      - (2) the bund must be lined with an impermeable sheet material which, with proper maintenance, liquid digestate cannot permeate for a period of at least 20 years,
      - (3) the bund must have a means of removing rainwater from it,
      - (4) other than as necessary to allow rainwater to be removed, the base and walls of the bund must not be penetrated by any valve, pipe or other opening,

	<ul style="list-style-type: none"><li>(n) where a liquid digestate storage system is to be constructed or to be substantially rebuilt or enlarged—<ul style="list-style-type: none"><li>(i) the operator must notify SEPA no later than 30 days prior to commencing the works,</li><li>(ii) the notification under subparagraph (i) must be accompanied by an engineering plan for the works to be carried out, and</li><li>(iii) the operator must retain for the lifetime of the liquid digestate storage system, for inspection by SEPA on request, the engineer’s final sign-off certificate for the works,</li></ul></li><li>(o) liquid digestate may be stored in a slurry storage system which complies with the requirements in column 2 of activity 32 of this schedule in relation to the storage of slurry.”.</li></ul>
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(5) In Part 2 of schedule 3—

(a) in the definition of “farm yard manure”, after “food”) insert “and includes digestate fibrous residue”,

(b) at the appropriate places in alphabetical order insert—

““bed width” means the straight line distance that is between the opposite bank toes of a river burn or ditch, and which spans the bed of the river, burn or ditch, including any exposed bars and vegetated islands,”,

““constructed farm wetland” means a series of ponds for the treatment of slurry or silage effluent consisting mainly of rainwater, which have been constructed in such a manner that any discharge from the ponds does not pollute the water environment,”,

““domestic sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968(15),”,

““draff” means the residue of grain after fermentation of the grain in a brewing or distilling process,”,

““draw off pipe” means a pipe used to withdraw oil from a container,”,

““farm” means land occupied as a unit for agricultural purposes,”,

““fill pipe” means a pipe used to deliver oil into a container,”,

““forage crop” means any crop grown as food for livestock or for use in energy production,”,

““housed” means kept permanently or overwintered, indoors or outside, on a collection based slurry system,”,

““impermeable sheet material” means—

(a) synthetic rubbers, EPDM (ethylene propylene diene monomer rubber) and butyl,

(b) plastics, including polyvinyl chloride, low density polyethylene and high density polyethylene, and

(c) reinforced geomembranes,”

““liquid digestate” means—

(a) whole digestate,

(b) the liquid fraction, or

(c) any run-off from the storage of fibrous residue,

resulting from an anaerobic digestion process of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process,,,”

““liquid digestate storage system” means—

(a) a liquid digestate tank,

(b) any feedstock tank used in connection with the liquid digestate tank, and

(c) any channels and pipes used in connection with the liquid digestate tank or feedstock tank,”

““liquid digestate tank” includes a lagoon or tower used for the storage of liquid digestate,”

““livestock” means any animal kept for use or profit as part of a commercial enterprise,”

““precision equipment” means equipment capable of low emission, accurate application techniques including a dribble bar or band spreader, trailing hose, trailing shoe or direct injection,”

““private dwelling” means any part of a building used or intended to be used as a dwelling,”

““radioactive substance” has the same meaning as in paragraph 4 of schedule 8 of the Environmental Authorisations (Scotland) Regulations 2018(16),”

““reception pit” means a pit used for the collection of slurry before it is transferred into a slurry storage tank or for the collection of slurry discharged from such a tank,”

““silage” means any forage crop (including draff) which is being, or has been, conserved by fermentation or preservation (including the use of additives), or both,”

““silage effluent” means—

(a) effluent produced from any forage crop which is being made or has been made, into silage,

(b) a mixture consisting wholly of or containing such effluent, rainwater or groundwater emanating from a silo, silage effluent collection system or drain,”

““silo” means any structure used for making or storing silage,”

““slurry” includes—

(a) excreta, including any liquid fraction, produced by livestock whilst in a yard or building (including woodchip corrals), and

(b) a mixture consisting wholly of or containing such excreta, bedding, feed residues, rainwater and washings from a building or yard used by livestock, dungsteads or middens, high level slatted buildings and weeping wall structures or any combination of these, provided such excreta is present,”

““slurry storage system” means—

- (a) a slurry storage tank,
- (b) any reception pit and any effluent tank used in connection with the slurry storage tank, and
- (c) any channels and pipes used in connection with the slurry storage tank, any reception pit or any effluent tank,”

““slurry storage tank” includes a lagoon, pit (other than a reception pit) or tower used for the storage of slurry,” and

““trunk road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984(17)

#### **Transitional provision: general binding rules activity 18**

4.—(1) In relation to activity 18 (the storage and application of fertiliser) of schedule 3 (general binding rules) of the 2011 Regulations as amended by regulation 3(4)(j), slurry does not need to be applied using precision equipment until 1 January 2027, unless the slurry is—

- (a) applied by contractors,
- (b) applied on farms with more than 100 milking cows or 200 beef cattle livestock units, or
- (c) applied on pig units with more than 800 fattening pigs or 800 sows.

(2) Where regulation 4(1) applies so that slurry does not need to be applied using precision equipment, slurry must not be applied by means of a raised splash plate or rain gun.

(3) In calculating the number of beef cattle livestock units on the farm for the purposes of subparagraph (1)(b)—

- (a) an animal of 2 years and older is 1 unit, and
- (b) an animal under 2 years old is 0.5 of a unit.

#### **Transitional provision: general binding rules activity 31**

5. In relation to new activity 31 (the making and storage of silage other than in bales or bulk bags) inserted into schedule 3 of the 2011 Regulations by regulation 3(4)(p)—

- (a) a silo which was exempt under regulation 5 of the 2003 Regulations immediately before 1 January 2022 is not required to comply with the rules specified in paragraphs (a) to (g) of column 2 until 1 January 2026,
- (b) a silo constructed before 1 January 2022, to which paragraph (a) does not apply, is not required to comply with the rules specified in paragraphs (a) to (j) of column 2 until 1 January 2024,
- (c) a silo in respect of which planning permission was granted before 1 January 2022, but which is not constructed before that date, is not required to comply with the rules specified in paragraphs (a) to (j) of column 2 until 1 January 2024.

#### **Transitional provision: general binding rules activity 32**

6. In relation to new activity 32 (the storage of slurry) inserted into schedule 3 of the 2011 Regulations by regulation 3(4)(p)—

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(17) 1984 c. 54. The definition of “trunk road” in section 151 has been amended by section 4 and paragraph 38(15)(b) of schedule 2 of the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 12(7) of the Forth Crossing Act 2011 (asp 2) and section 1(4) of the Forth Road Bridge Act 2013 (asp 8).

- (a) a slurry storage system which was exempt under regulation 5 of the 2003 Regulations immediately before 1 January 2022 is not required to comply with the rules specified in paragraphs (e) to (l) of column 2 until 1 January 2026,
- (b) a slurry storage system constructed before 1 January 2022, to which paragraph (a) does not apply, is not required to comply with the rules specified in paragraphs (e) to (n) of column 2 until 1 January 2024,
- (c) a slurry storage system in respect of which planning permission was granted before 1 January 2022, but which is not constructed before that date, is not required to comply with the rules specified in paragraphs (e) to (n) of column 2 until 1 January 2024,
- (d) the rules specified in paragraphs (a) to (c) of column 2 do not apply where the activity takes place outside a nitrate vulnerable zone until 1 January 2026.

#### **Transitional provision: general binding rules activity 34**

7. In relation to new activity 34 (storage of liquid digestate) inserted into schedule 3 of the 2011 Regulations by regulation 3(4)(p), a liquid digestate storage system or slurry bag storage for liquid digestate—

- (a) which was constructed before 1 January 2022, or
- (b) in respect of which planning permission was granted before 1 January 2022, but which is not constructed before that date,

is not required to comply with the rules specified in column 2 until 1 January 2024.

#### **Consequential amendment**

8. In regulation 3(1) (interpretation) of the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(18), in the definition of “silage effluent”, for “regulation 1(2) of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003” substitute “Part 2 of schedule 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011”.

#### **Revocations**

- 9. The schedule has effect.

St Andrew’s House,  
Edinburgh  
9th November 2021

*MAIRI McALLAN*  
Authorised to sign by the Scottish Ministers

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(18) S.S.I. 2008/298. The definition of “silage effluent” was inserted by S.S.I. 2013/123.