
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“the 2011 Regulations”).

Regulation 1 provides that these Regulations come into force on 1 January 2022, except for specified provisions relating to the precision application of slurry and liquid digestate, which come into force on 1 January 2023.

Regulation 3(2) amends regulation 3 of the 2011 Regulations, which sets out which activities the 2011 Regulations apply to, to improve clarity. The amendment provides that 2011 Regulations do not apply to the construction and alteration of impoundment works in transitional and coastal waters and to certain discharges in connection with scientific experiments or surveys in transitional and coastal waters. Those activities in transitional and coastal waters are regulated under Part 4 of the Marine (Scotland) Act 2004. The previous exclusion from the application of the 2011 Regulations to activities licensed under Part 4 of the Marine (Scotland) Act 2004 or Part II of the Food and Environment Protection Act 1985 is removed as it is no longer necessary.

Regulation 3(3) makes a minor change to regulation 36 of the 2011 Regulations.

Regulation 3(4) amends existing general binding rules 5, 6, 8, 9, 11, 14, 15, 18, 22, 25, 27 and 28 in Part 1 of schedule 3, replaces existing general binding rule 10 with general binding rules 10A to 10D, and inserts new general binding rules 29 to 34 in that Part of that schedule.

The following changes are made to the existing general binding rules listed above—

- Activities 5, 6, 8 and 14 – the rules relating to these activities are revised so that a consistent approach to the measurement of rivers, burns and ditches is taken, by reference to their bed width,
- Activity 8 – rule (e) is revised to clarify that geotextiles used in the construction of revetments must be biodegradable, and rule (i) is revised so that banks must not be lowered,
- Activity 9 – a minor amendment is made to rule (c) for clarity,
- Activity 11 – rule (c) is revised to clarify that domestic sewage must not be discharged into any surface water drainage system,
- Activity 15 – a new rule (g) is added to authorise, subject to conditions, the discharge of abstracted groundwater from boreholes or wells directly back to the same part of the geological formation or mine workings from which it was abstracted, and some consequential amendments are made to rules (b) and (f),
- Activity 18 relates to the storage and application of fertiliser. A consequential amendment is made to the description of the activity. New rule (n) is introduced to require risk assessments to be carried out where organic fertilisers are to be applied to land, including the preparation of a map identifying areas of high risk where field heaps must not be located. New rule (o) is introduced to Activity 18 to provide that precision equipment must be used to apply to slurry and liquid digestate, and comes into force on 1 January 2023. Regulation 4 contains a transitional provision which provides that in certain cases slurry does not need to be applied using precision equipment until 1 January 2027, although in that transitional period it must not be applied using a rain gun or raised splash plate,
- Activity 22 is revised to include the discharge of water run-off from waterbound roads, which was previously covered by Activity 10. New rules (a) to (c) are introduced for greater

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consistency with the rules for other activities, which prevent the discharge from polluting the water environment,

- Activity 25 relating to the placement of trees to prevent bank erosion is widened, and rule (f) is revised to allow other trees, in addition to willow, to be used. Other minor revisions are made to the rules to improve clarity,
- Activity 27 is revised to apply to the storage of oil in private dwellings, to clarify that it does not apply to commercial premises which have residential purposes (which are covered by Activity 28),
- Activity 28 – rule (f)(vii) relating to the delivery of oil through a flexible pipe is revised, so that the requirement for the pipe to be kept within the secondary containment system or positioned above an area which drains to a suitable oil interceptor when not in use does not apply where the pipe is enclosed in a secure cabinet equipped with a drip tray. Rule (f)(viii) is revised to introduce the option for the pump to be fitted with an isolating device.

General binding rule 10 which authorised the discharge of water run-off from a surface water drainage system from specified built environments is revised and replaced with separate general binding rules 10A -10D, for improved clarity.

General binding rule 10A authorises the discharge of water run-off from a surface water drainage system from specified built environments constructed before 1 April 2007, and general binding rule 10B authorises the discharge of water run-off from a surface water drainage system from specified built environments constructed on or after 1 April 2007.

An exception to Activity 10B has been revised, so that the discharge of water run-off from land of more than 30 hectares which is used for residential premises is not authorised (previously the exception applied to land used for residential premises of more than 60 hectares).

General binding rule 10C is new, and authorises the discharge of water run-off from a quarry or borrow pit constructed on or after 1 January 2022.

General binding rule 10D authorises the discharge of water run-off from specified construction sites.

General binding rules 29, 30 and 31 are new and relate to the making, storage and treatment of silage. They restate with amendments provisions of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (“the 2003 Regulations”). The requirements relating to making and storage of silage in bulk bags (general binding rule 29) have been slightly revised to provide that bales or bulk bags must not be stored, opened or unwrapped within 10 metres of any surface water or opening into a surface water drain which silage effluent could enter if it were to escape. General binding rule 30 allows for silage effluent to be drained to a constructed farm wetland, as was permitted under the 2003 Regulations, however the calendar restriction which previously applied in the 2003 Regulations has not been incorporated, and the drainage may take place when the silo has been opened. General binding rule 31 provides detailed requirements for silos. Different requirements apply depending on when the silo was constructed. Silos constructed prior to 1 September 1991, which were previously exempt under the 2003 Regulations, must meet some of the requirements.

Regulation 5 contains a transitional provision which applies to general binding rule 31. It provides that previously exempt silos have until 1 January 2026 to comply with the requirements. Silos constructed or granted planning permission before 1 January 2022 (which were not previously exempt) have until 1 January 2024 to comply.

General binding rules 32 and 33 are new and relate to the storage and treatment of slurry. They restate with amendments provisions of the 2003 Regulations. General binding rule 32 provides detailed requirements for slurry storage systems. Different requirements apply depending on when the slurry storage system was constructed. Slurry storage systems constructed prior to 1 September 1991 and which were previously exempt under the 2003 Regulations, must meet some of the requirements. New rules are included to allow slurry to be stored in suitable slurry bags. The rules relating to the

required minimum capacity of the storage have been revised to be consistent with the requirements which apply in nitrate vulnerable zones under the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008, based upon the quantity of slurry produced in 22 weeks for housed cattle or 26 weeks for housed pigs.

Regulation 6 contains a transitional provision which applies to general binding rule 32. It provides that previously exempt slurry storage systems have until 1 January 2026 to comply with the requirements. Slurry storage systems constructed or granted planning permission before 1 January 2022 (which were not previously exempt) have until 1 January 2024 to comply. Where the activity takes place outside a nitrate vulnerable zone, the new requirements relating to the minimum capacity of the storage do not apply until 1 January 2026.

General binding rule 34 is new and provides detailed requirements for the storage of liquid digestate. Regulation 7 contains a transitional provision which applies to general binding rule 34. Liquid digestate storage systems and slurry bags which were constructed or which were granted planning permission before 1 January 2022 have until 1 January 2024 to comply.

Regulation 3(5) inserts new definitions in Part 2 of schedule 3 of the 2011 Regulations.

Regulation 8 makes consequential amendment.

Regulation 9 and the schedule revoke the 2003 Regulations, and make other consequential revocations.