
STATUTORY INSTRUMENTS

1998 No. 2927 (S. 171)

AGRICULTURE

WATER, SCOTLAND

**The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations
1998**

<i>Made</i>	<i>25th November 1998</i>
<i>Laid before Parliament</i>	<i>27th November 1998</i>
<i>Coming into force</i>	<i>19th December 1998</i>

The Secretary of State for Scotland, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to the prevention, reduction and elimination of pollution of water, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, after having taken into account available scientific and technical data, mainly with reference to the respective nitrogen contributions originating from agricultural and other sources, and the environmental conditions of the **nitrate vulnerable zone** in Scotland, hereby makes the following Regulations:

Citation, commencement and extent

1. - (1) These Regulations may be cited as the **Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 1998** and shall come into force on 19th December 1998.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. In these Regulations-

"farm" includes livestock unit, and has the same meaning which it has in Annex III, paragraph 2 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by **nitrates** from agricultural sources^[3];

"**nitrate vulnerable zone**" means the area designated as a **nitrate vulnerable zone** in accordance with regulation 3 of the Protection of Water Against Agricultural **Nitrate** Pollution (Scotland) Regulations 1996^[4];

"the Committee" means the Hill Farming Advisory Committee constituted under section 32 of the Hill Farming Act 1946^[5];

"SEPA" means the Scottish Environment Protection Agency.

Implementation of action programme

3. - (1) The occupier of any farm all or part of which is in a **nitrate vulnerable zone** shall

ensure that the **action programme** set out in the Schedule hereto is implemented in relation to any land comprised in the farm and in the **nitrate vulnerable zone**.

(2) For the purposes of paragraph (1) above, 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 land comprised in the farm.

Notice to remedy contravention of regulation 3

4. - (1) Where the Secretary of State is of the opinion that a person-

(a) is contravening a requirement imposed on him by regulation 3; or

(b) has contravened such a requirement in circumstances which make it likely that the contravention will continue or be repeated,

the Secretary of State 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 Secretary of State considers appropriate 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 effect in relation to the notice of regulation 5 below.

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

(4) The Secretary of State may at any time-

(a) withdraw the notice;

(b) extend the period for compliance with any requirement of the notice; or

(c) with the consent of the person on whom the notice is served, modify the requirements of the notice.

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 (or within such longer period as the Committee may allow) appeal to the Committee against the notice.

(2) An appeal under this regulation shall be made by the appellant serving notice on the Committee and the notice shall contain or be accompanied by a statement of the grounds of appeal.

(3) Before determining an appeal under this regulation the Committee shall-

(a) give SEPA an opportunity to express its views on the appeal, and

(b) if requested to do so by the appellant or the Secretary of State, afford them an opportunity of appearing before and being heard by a person appointed by the Committee for that purpose.

(4) On determining an appeal under this regulation the Committee shall have power to direct the Secretary of State to withdraw the notice under regulation 4 above, to modify any of its requirements, to extend the period for compliance with any requirement or to dismiss the appeal.

(5) The period for compliance with a notice under regulation 4 above shall, subject to any direction under paragraph (4) above, be extended by a period equal to the period beginning with the date on which notice of appeal is served and ending on the date on which the Committee finally determines the appeal or, if the appeal is withdrawn, the date on which it is withdrawn.

Monitoring

6. - (1) The occupier of any farm all or part of which is in a **nitrate vulnerable zone** shall permit any person authorised by the Secretary of State ("the authorised person"), accompanied by such persons as appear to the authorised person to be necessary for the purpose, at all reasonable times, where necessary in order to monitor implementation of the **action programme** or to assess its effectiveness in reducing water pollution caused or induced by **nitrates** from agricultural sources and preventing further such pollution, to-

(a) enter upon the land;

(b) take samples;

(c) install and maintain equipment; or

(d) examine all records kept in implementation of the **action programme**.

(2) The occupier of any farm all or part of which is in a **nitrate vulnerable zone** shall render 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 him in making the inspection of any land.

(3) In this regulation, "occupier" shall be construed in accordance with regulation 3(2).

Offences

7. - (1) Any person who fails to comply with a requirement imposed on him by regulation

3, or by a notice served on him 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 on him 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 who was purporting to act in such capacity,

he, 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, he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

Revocation

9. Regulation 5 (codes of good agriculture practice) of the Protection of Water Against Agricultural **Nitrate** Pollution (Scotland) Regulations 1996[6] is hereby revoked.

Sewel

Parliamentary Under Secretary of State, Scottish Office

St Andrew's House, Edinburgh

25th November 1998

SCHEDULE

Regulation 3

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;

"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;

"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 soil where-

(a) in the layer up to 40cm deep, there are-

(i) more than 50 per cent by weight of sand sized particles (that is particles more than 0.06mm and less than 2mm in diameter),

(ii) less than 18 per cent by weight of clay sized particles (that is particles less than 0.02mm in diameter), and

(iii) less than 5 per cent by weight of organic carbon; and

(b) in the layer 40cm deep and up to 80cm deep, the sum of the percentage, by weight, of silt sized particles (that is particles more than 0.02mm in diameter and less than 0.06mm in diameter) and double the percentage, by weight, of clay sized particles is less than or equal to 30 per cent of the total weight of sand, silt and clay sized particles;

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

"spring sown crop" means a crop sown between 1st February and 31st July in the same year,

and other expressions used in Council Directive 91/676/EEC concerning the protection of waters against pollution caused by **nitrates** from agricultural sources^[7] 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 9 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 3-14 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,
- (c) land use and agricultural practice.

3. Nitrogen fertiliser shall not be applied to any land in excess of crop requirement.

4. - (1) Chemical fertiliser shall not be applied to land between the dates specified in paragraph (2) below in relation to that land.

(2) The 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) The prohibition in paragraph (1) above shall not apply where, taking into account the characteristics of the crop and soil, the nitrogen requirement of the crop between the dates specified in paragraph (2) above can only be met by applying fertiliser between those dates.

5. Nitrogen fertiliser shall be applied to land in as accurate and uniform a manner as is practicably possible.

6. Nitrogen fertiliser shall not be applied to steeply sloping fields.

7. 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; or
- (d) the land is covered by snow.

8. Chemical fertiliser shall not be applied to any land in a location or manner which makes it likely that the chemical fertiliser will directly enter surface water.

9. - (1) Without prejudice to paragraph 10 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-
 - (i) 210kg in relation to a year ending on or before 19th December 2002;
 - (ii) 170kg in relation to other years.

10. 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.

11. Organic manure shall not be applied to any land less than 10 metres from surface water.

12. - (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**, or
 - (ii) left in field and incorporated into the soil during cultivation for autumn sown crops, or
 - (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;

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

13. Organic manure in the form of slurry, poultry manure or liquid digested sewage sludge shall not be applied to any land which has a sandy or shallow soil-

(a) between 1st September and 1st November in any year where the land is in grass or is or is to be sown with an autumn sown crop;

(b) between 1st August and 1st November in any year in any other case.

14. 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.

15. Records shall be made sufficient to enable any person inspecting those records readily to ascertain-

(a) the area of the farm;

(b) 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;

(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;

(c) 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;

(d) 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; and

(e) 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.

16. Any record made for the purposes of paragraph 15 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 zone** which was designated in Scotland by the Protection of Water Against Agricultural Nitrate Pollution (Scotland) Regulations 1996 (S.I. 1996/1564). The Regulations implement, as regards Scotland, the requirement in Article 5 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by **nitrates** from agricultural sources (OJ No. L375, 31.12.91, p.1) to establish such a **programme**.

2. Regulation 3 requires the occupier of a farm or livestock unit all or part of 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 farm or livestock unit or to that part of it 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 Appraisal in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies can be obtained from the Environment Protection Unit, Scottish Office Agriculture, Environment and Fisheries Department, Victoria Quay, Leith EH6 6QQ.

Notes:

[1] S.I. 1989/2393.[back](#)

[2] 1972 c.68.[back](#)

[3] O.J. No. L375, 31.12.91, p.1.[back](#)

[4] S.I. 1996/1564.[back](#)

[5] 1946 c.73.[back](#)

[6] S.I. 1996/1564.[back](#)

[7] OJ No. L.375, 31.12.91, p.1.[back](#)

ISBN 0 11 055892 8