Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2003 No. 51

AGRICULTURE
WATER

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

Made - - - -	*28th January 2003*
Laid before the Scottish Parliament - - - -	*30th January 2003*
Coming into force - -	*20th February 2003*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 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.

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 [F2];

"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 [F3] and regulation 3 of the Designation of Nitrate Vulnerable Zones (Scotland) (No.2) Regulations 2002 [F4];

"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 [F5].

F2 O.J. No. L 375, 31.12.91, p.1.
F3 S.S.I. 2002/276.
F4 S.S.I. 2002/546.
F5 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 of 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

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;

"coastal waters" and "inland waters" have the same meaning as in section 30A(1) of the Control of Pollution Act 1974 [F6];

"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