

SCHEDULE

Regulation 4

GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION

PART I

Protection of soil from erosion

Minimum soil cover

Winter soil cover and final seedbeds

1.—(1) Subject to sub-paragraph (2), where land has been cropped with any crop which has been harvested a farmer must ensure that throughout the winter following that harvest such land—

- (a) is covered by the stubble of the harvested crop, by another crop or by grass; or
- (b) has a surface which is ploughed, or roughly cultivated (by the use of discs or tines or otherwise).

(2) Sub-paragraph (1) does not apply to the extent that the prevailing agronomic or weather conditions and the condition of the composition of the soil of that land—

- (a) after harvest are such that compliance with that sub-paragraph would be detrimental to the use of the land for agricultural production; or
- (b) are such that they would indicate the planting of the following year's crop before the end of winter.

(3) Final seedbeds must only be created as shortly before the next crop is planted as possible to avoid significant evident erosion of the soil, taking account of prevailing weather conditions.

Minimum land management reflecting site-specific conditions

Wind erosion

2. In relation to an area of land prone to wind erosion of the soil, a farmer must reduce the risk of soil loss during the spring by planting and maintaining on or in relation to that field, until a crop is established in that area,—

- (a) crop cover by another crop;
- (b) coarse seedbeds;
- (c) shelter belts; or
- (d) nurse crops to protect other crops grown on the land,

or taking other measures with equivalent effect to the establishment of one of those features.

Capping

3.—(1) In any field which is prone to capping, or where there is capping, a farmer must form a coarse seedbed or ensure that the farmer breaks any cap which forms so as not to cause erosion.

(2) In this paragraph, “capping” means soil particles which run together when wet, and dry so as to form a crust on the surface of the soil; and “cap” shall be construed accordingly.

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Watercourses, watering points and feeding areas

4.—(1) A farmer must prevent the erosion of the banks of watercourses, at watering points or feeding areas from overgrazing or heavy poaching by livestock except—

- (a) within 10m of a gateway; or
- (b) within 3m of a farm track necessarily used during wet-periods,

by reducing the livestock numbers on that land so as to cause the land to recover to the extent that the erosion is no longer significant by any time during the growing season in the calendar year following the date when that erosion first occurred.

(2) In this paragraph “heavy poaching” means the cutting up of turf to a significant degree from trampling by livestock.

Field drains

5.—(1) Subject to sub-paragraph (2), a farmer must maintain any functional field drainage systems on the land in a working state (whether by clearing ditches or otherwise).

(2) Sub-paragraph (1) shall not apply where an environmental gain would be achieved by not maintaining the field drainage systems provided the farmer has, prior to that system ceasing to function, declared the environmental gain to be achieved—

- (a) in the farmer’s aid application under Article 22 of the Council Regulation; or
- (b) in any other prior application for a direct payment.

Muirburning

6. A farmer must comply with the requirements of the Muirburn Code⁽¹⁾.

PART II

Practices to maintain soil organic matter levels

Standards for crop rotations where applicable

Arable break crops or the application of organic materials

7.—(1) On arable land cultivated for crop production, a farmer must either—

- (a) use suitable break crops to maintain organic matter in the soil in an arable rotation; or
- (b) optimise the application of organic materials to land by applying rates of application of the material calculated by reference to the requirements of the soil and crops grown.

(2) Where a farmer uses the option specified at sub-paragraph (1)(b), the farmer must make and keep for 5 years a written record of the organic materials, and the quantities of those materials, applied to the land.

(1) Published in 2004 by the Scottish Executive Environment and Rural Affairs Department (“SEERAD”) and available from SEERAD, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY.

Arable stubble management

Incorporation of livestock manures

8. Except on an area of land prone to wind erosion of the soil, a farmer must incorporate livestock manures spread on stubble into the soil within a period of 2 weeks after the date of spreading on a particular area of stubble.

PART III

Maintenance of soil structure

Appropriate machinery use

Machinery use for planting or sowing

- 9.—(1) A farmer must not carry out any cultivation using machinery if—
- (a) water is standing on the surface of the land; or
 - (b) the soil is saturated to the point where water is clearly visible when pressure equivalent to a footprint is applied.
- (2) In this paragraph, “cultivation” means cultivation to prepare for planting or sowing.

PART IV

Minimum level of maintenance and prevention of deterioration of habitats

Minimum livestock stocking rates or/and appropriate regimes

Undergrazing

- 10.—(1) A farmer must not allow undergrazing of land.
- (2) Where undergrazing under sub-paragraph (1) 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 a non-compliance for the purposes of sub-paragraph (1), land is not undergrazed unless it is not 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.

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(2) Where a farmer can demonstrate to the satisfaction of the Scottish Ministers that appropriate action has been taken, they will be taken to have complied with sub paragraph (1) 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, where in the case of an incursion of significant numbers of such deer the farmer can show that advice has been taken from the Deer Commission for Scotland and that advice has been acted upon; or
- (c) rabbits, where the farmer can show that appropriate control methods have been used.

(3) In establishing a non-compliance for the purposes of sub-paragraph (1), land is not overgrazed unless it is not capable of recovering to the extent that the growth quality or species composition of vegetation is no longer adversely affected to a significant degree by any time during the growing season in the calendar year following the date when the land first became overgrazed.

(4) Where overgrazing under sub-paragraph (1) 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.

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 Chapter VI of Title II of Council Regulation (EC) 1257/1999 as amended(2);
- (b) approval under the Uncultivated Land and Semi-Natural Areas Regulations(3);
- (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 by consequence of its status as a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994(4).

(2) O.J. No. L 160, 26.6.1999, p.80, amended by Commission Regulation (EC) No. 1783/2003 (O.J. No. L 270, 21.10.2003, p.70), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (O.J. L 236, 30.09.2003, p.33, Council Regulation (EC) No. 576/2004 (O.J. L 90, 27.3.2004), p. 1 and Council Regulation (EC) No. 583/2004 (O.J. No. L 91, 30.3.2004, p.1).

(3) S.S.I. 2002/6.

(4) S.I.1994/2716, amended by S.S.I. 2004/475.

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 Uncultivated Land and Semi-Natural Areas Regulations.

(2) In this paragraph, “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 Uncultivated Land and Semi-Natural Areas 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 herbicides, to control injurious weeds to which the Weeds Act 1959⁽⁵⁾ applies;
- (d) to control bracken with Asulam or other herbicides approved within the meaning of the Control of Pesticides Regulations 1986⁽⁶⁾ or the Plant Protection Products (Scotland) Regulations 2003⁽⁷⁾; or
- (e) to control other plants, with the prior written consent of the Scottish Ministers.

Retention of landscape features

Boundary features

15.—(1) 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) by or under any enactment, another authority as shall be notified to the farmer by the Scottish Ministers when the farmer applies to them for consent.

(2) A farmer must not trim a hedge in the period beginning on 1st March and ending on 31st July, except only to the extent necessary for the purposes of road safety.

(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.

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—

⁽⁵⁾ 1959 c. 54.

⁽⁶⁾ S.I. 1986/1510, amended by S.I. 1990/2487, 1994/3142 and 1997/188.

⁽⁷⁾ S.S.I. 2003/579, amended by S.S.I. 2004/368.

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- (a) the Scottish Ministers; or
 - (b) by or under any enactment, another authority as shall be notified to the farmer by the Scottish Ministers when the farmer applies to them 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.
- (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 the following buildings, gardens and landscapes without the relevant prior consent or permission, where that consent or permission is required to allow that alteration, damage or destruction:—

- (a) a building 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⁽⁸⁾ without prior scheduled monument consent⁽⁹⁾ 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⁽¹⁰⁾ 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 (General Development Procedure) (Scotland) Order 1992⁽¹¹⁾ in respect of which consultation is required before grant of planning permission under article 15(1)(j)(iv) of that Order.

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) 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;

⁽⁸⁾ 1979 c. 46.

⁽⁹⁾ 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).

⁽¹⁰⁾ 1997 c. 9.

⁽¹¹⁾ S.I. 1992/224, to which there are amendments not relevant to these Regulations.

- (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 any environmental gain to be achieved which is relied on under this paragraph–
 - (i) in the farmer’s aid application under Article 22 of the Council Regulation; or
 - (ii) in any other prior application for a direct payment.