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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 298**

**The Action Programme for Nitrate Vulnerable  
Zones (Scotland) Regulations 2008**

**PART 3**

**Records to be kept**

**25.**—(1) Subject to paragraph (2), the occupier must keep records which must be sufficient to enable any person inspecting those records readily to ascertain—

- (a) the area of the farm;
- (b) for each field on the farm—
  - (i) the area of the field;
  - (ii) the soil type in the field;
  - (iii) the quantity of each type of nitrogen fertiliser applied in relation to each crop;
  - (iv) the type of any crop grown and the date the crop was sown;
  - (v) the date of application of each type of nitrogen fertiliser applied in relation to each crop;
- (c) the number of livestock kept on the farm, their species and type, and the length of time kept on the farm;
- (d) the quantity of each type of livestock manure (whether farmyard manure, slurry, poultry manure, or other livestock manure) produced on the farm and the nitrogen content of such manure which is retained and used on the farm;
- (e) the quantity and nitrogen content 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 person receiving it;
- (f) the quantity and nitrogen content of each type of organic manure moved onto the farm, the date of that movement and the name and address of the supplier;
- (g) the quantity and type of chemical fertiliser brought onto the farm, used on the farm and retained on the farm.

(2) The records referred to in paragraph (1) must be kept for each year.

**Records to be retained**

**26.** The occupier must retain any record kept for the purposes of regulation 25 for a period of 5 years from the end of the year to which it relates.

**Inspections**

**27.**—(1) The occupier must 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 these Regulations or of assessing their 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;
- (d) to examine all records kept under these Regulations.

(2) The occupier must give all reasonable assistance to any person acting by virtue of paragraph (1) above and in particular must—

- (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.

### **Serving of notices**

**28.**—(1) Where the Scottish Ministers are of the opinion that an occupier has contravened a requirement imposed by these Regulations, they may serve a notice on the occupier in accordance with paragraph (2).

(2) A notice must—

- (a) require the occupier 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 occupier on whom it is served of any right of appeal under these Regulations.

(3) The period stated in the notice for compliance with any such requirement must be such period as is reasonable in the circumstances and must 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.

(5) Unless a modification of the requirements of a notice is consented to by the occupier or is made in consequence of a direction under regulation 29(6), the modification is to impose no greater burden on the occupier than the notice did before modification.

### **Appeals against notices**

**29.**—(1) An occupier served with a notice under regulation 28 may within the period of 28 days beginning with the day on which that notice is served appeal to the Scottish Land Court<sup>(1)</sup> on the grounds set out in paragraph (3).

(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—

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(1) The Scottish Land Court, established by section 3 of the Small Landholders (Scotland) Act 1911, and continued in being under section 1 of the Scottish Land Court Act 1993 (c. 45).

- (a) the contravention did not occur;
- (b) any requirement imposed by the notice is inadequately specified in it;
- (c) any requirement imposed by the notice is not necessary to remedy, or to prevent the continuation or repetition of, the contravention to which the notice relates; or
- (d) any requirement imposed by the notice is not appropriate to achieve compliance with these Regulations 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 must give such detail of the modification proposed as will adequately indicate the nature, extent and cost of that modification.

(5) The Chairman of the Scottish Land Court may make such arrangements as are considered appropriate for the hearing of appeals under these Regulations and such arrangements may permit the Chairman or any member of the Court to determine the whole or any part of an appeal.

(6) On determining an appeal under this regulation the Court may 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.

(7) The requirement to comply with a notice under regulation 28 shall be suspended until the date on which the Court finally intimates its determination of the appeal or the date on which the appeal is withdrawn.

#### **Offences – general**

**30.**—(1) Any person who fails to comply with—

- (a) regulation 4, 25 or 26, or
- (b) a requirement imposed by a notice served under regulation 28,

is 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 regulation 27 is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

#### **Offences by directors, etc.**

**31.**—(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 purporting to act in such capacity,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purpose of paragraph (1) “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 is guilty of the offence and liable to be proceeded against and punished accordingly.