

SCHEDULE

Regulation 2

MODIFICATION TO THE WATER ENVIRONMENT
(CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005

1. In Part 1 of Schedule 3 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (General Binding Rules), immediately after activity 17 insert—

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- “18. The storage and application of fertiliser other than where it is regulated by:
- (a) the Sludge (Use in Agriculture) Regulations 1989(1);
 - (b) a waste management licence in terms of section 35 of the Environmental Protection Act 1990(2);
 - (c) the registration of a registered exemption, under the Waste Management Licensing Regulations 1994(3); or
 - (d) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(4).
- (a) no fertiliser shall be stored on land that—
- (i) is within 10 metres of any surface water or wetland;
 - (ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;
 - (iii) is waterlogged; or
 - (iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the fertiliser is stored in an impermeable container;
- (b) paragraph (a) does not apply where such storage is in a building which is constructed and maintained to such a standard as is necessary to prevent run off or seepage of fertiliser from the building;
- (c) no organic fertiliser shall be applied to land that—
- (i) is within 2 metres of any drainage ditch or within 5 metres of any other surface water or wetland;
 - (ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;

(1) S.I.1989/1263; relevant amending instruments are S.I. 1990/880, S.I. 1996/973 and S.S.I. 2000/62.
(2) 1990 c. 43; section 35 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 66, and by S.S.I. 2000/323, Schedule 10, Part 1, paragraph 3(4). For a definition of ‘waste’ see section 75 of the Environmental Protection Act 1990 as amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 88.
(3) S.I. 1994/1056; relevant amending instrument is S.S.I. 2006/541.
(4) S.S.I. 2003/531; amended by S.S.I. 2006/133.

Status: This is the original version (as it was originally made).

- (iii) is sloping with an overall gradient in excess of 15°, or 25° on uncultivated land designated for forestry;
 - (iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or
 - (v) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow;
- (d) no inorganic fertiliser shall be applied to land that—
- (i) is within 2 metres of any surface water or wetland;
 - (ii) is within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;
 - (iii) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or
 - (iv) is frozen, waterlogged, or covered with snow;
- (e) fertilisers shall not be applied to land in excess of the nutrient needs of the crop;
- (f) any equipment used to apply fertiliser shall be maintained in a good state of repair; and
- (g) fertiliser shall be applied on land in such a way and at such times that the risk of pollution to the water environment is minimised.

19. Keeping of livestock.

- (a) significant erosion or poaching of any land that is within 5 metres of surface water or wetland shall be prevented;
- (b) livestock shall be prevented from entering any land that is within 5

- metres of a spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water; and
- (c) livestock feeders shall not be positioned within 10 metres of any surface water or wetland.
- 20. Cultivation of land.**
- (a) no land shall be cultivated for crops that is—
- (i) within 2 metres of any surface water or wetland;
- (ii) within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water; or
- (iii) waterlogged;
- (b) moling of land shall not be permitted on slopes with an overall gradient in excess of 4.5°; and
- (c) land shall be cultivated in a way that minimises the risk of pollution to the water environment.
- (a) water shall be discharged in a way which minimises the risk of pollution to the water environment; and
- (b) no discharge from drainage shall result in the destabilisation of the banks or bed of the receiving surface water.
- (a) no material that will or will be likely to result in metallic, sulphide rich or strongly acidic polluted water run off from such roads or tracks shall be used in the carrying out of the activity.
- 21.** Without prejudice to the operation of activity 10 and the rules related to it, the discharge of water run-off via a surface water drainage system to the water environment as a result of rural land activities.
- 22. Construction and maintenance of waterbound roads and tracks.**
- (a) the preparation of pesticide for application and the cleaning or maintenance of pesticide sprayers shall be undertaken in conditions such that any spillages, run-off or washings will be prevented from entering the water environment;
- 23. The application of pesticide.**

Status: This is the original version (as it was originally made).

24. Operating sheep dipping facilities.
- (b) pesticide spraying equipment shall be maintained in a good state of repair;
 - (c) pesticide sprayers shall not be filled with water taken from the water environment unless—
 - (i) a device preventing back siphoning is fitted to the system; or
 - (ii) the water is first placed in an intermediate container; and
 - (d) pesticide-treated plants shall not be soaked in any part of the water environment.
- (a) sheep shall be prevented from having access to the water environment while there is a risk of transfer of sheep dip fluid from its fleece to the water environment;
- (b) no mobile sheep dipping facility, or part of any sheep dipping facility constructed after 1st April 2008 shall be located within 50 metres of any river, ditch, pond, freshwater loch, wetland, well, spring or borehole;
- (c) sheep dipping facilities shall not discharge underground and shall not leak or overspill;
- (d) sheep dipping facilities shall not be filled with water taken from the water environment unless—
 - (i) a device preventing back siphoning is fitted to the system; or
 - (ii) the water is first placed in an intermediate container; and
- (e) without prejudice to the continued requirement to obtain specific authorisation for the disposal of sheep dip under these Regulations, sheep dip facilities shall be emptied within 24 hours following completion of dipping.”

2. In Part 2 of Schedule 3 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (General Binding Rules)—

- (a) insert the following definitions in the appropriate places alphabetically—

“application” means the spreading, spraying, incorporating or injecting into or onto land;

“crop” includes any plant grown for a commercial purpose;

“cultivation” includes the preparation of land prior to planting, and the harvesting of any crop;

“farm yard manure” means a mixture of bedding material and animal excreta in solid form arising from the housing of livestock (excepting such arising from the keeping of birds for the production of food);

“fertiliser” means any substance containing nutrients which is utilised on land to enhance plant growth, but excludes forestry brush;

“forest” means land of an area of more than 0.5 hectares—

- (a) with a tree canopy cover of more than 20 percent;
- (b) which is planted with trees, which trees collectively have the capacity to provide a tree canopy cover of more than 20 percent; or
- (c) which meets all of the following criteria:
 - (i) it was used in the last 5 years as land described in paragraph (a);
 - (ii) it is to remain fallow of trees for a maximum of 4 consecutive years; and
 - (iii) when replanted with trees it will be replanted as land described in paragraph (b);

“moling” means a cultivation method where an implement is used to open a conduit within the soil along which water may flow;

“pesticide” has the same meaning as in section 16 of the Food and Environment Protection Act 1985(5);

“rural land use activities” means agricultural, forestry or leisure activity;”;

(b) omit “and” where it immediately precedes the defined term “uncultivated land”; and

(c) immediately after the definition of “uncultivated land” insert the following—

““water for human consumption” means water that may be ingested by humans, used in the preparation of food or drink, or used in the cleaning of materials involved in the storage or consumption of food or drink;

“waterbound road” means a road constructed of coarse stone and fine aggregate to form a tightly bound semi-impervious surface; and

“waterlogged” means soil which is at water retaining capacity, except in a forest where it means where water is visible on the soil surface.”.