

**2013 No. 123**

**ENVIRONMENTAL PROTECTION**

**AGRICULTURE**

**WATER**

**The Action Programme for Nitrate Vulnerable Zones (Scotland)  
Amendment Regulations 2013**

*Made* - - - - *4th April 2013*

*Laid before the Scottish Parliament* *9th April 2013*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them to do so.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Action Programme for Nitrate Vulnerable Zones (Scotland) Amendment Regulations 2013.

(2) With the exception of regulation 11, these Regulations come into force on 15th May 2013.

(3) Regulation 11 of these Regulations comes into force on 1st January 2014.

**Amendments to the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008**

**2.** The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(b) are amended in accordance with regulations 3 to 11.

**Amendment of regulation 3**

**3.**—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1), after the definition of “chemical fertiliser” insert—

““compost” means compost that—

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2008/298, as amended by S.S.I. 2008/394, 2009/447, 2011/228 and 2012/360.

- (a) complies with Publicly Available Specification PAS 100:2011 (Specification for composted materials) published by the British Standards Institution<sup>(a)</sup>, and
  - (b) does not contain livestock manure;”.
- (3) In paragraph (1), after the definition of “shallow” insert—
- ““silage effluent” has the meaning given in regulation 1(2) of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003<sup>(b)</sup>;”.
- (4) In paragraph (1), after the definition of “slurry” insert—
- ““soil nutrient status” means soil acidity and plant available concentrations of phosphorous, potassium and magnesium in the soil;
- “soil type” means the soil types listed in Table 1 of Schedule 3;”.

#### **Amendment of regulation 6**

4. For regulation 6 (storage of livestock manure), substitute—

##### **“Storage of livestock manure and silage effluent**

6.—(1) Subject to regulations 7 to 11, the capacity of storage facilities for livestock manure and silage effluent on a farm must be sufficient to store all livestock manure and silage effluent which is likely to require to be stored on the farm for such period as may be required to secure compliance with these Regulations and to avoid pollution of the water environment.

- (2) Storage facilities for livestock manure and silage effluent must—
- (a) be maintained free from structural defects; and
  - (b) be of such standard as is necessary to prevent run off or seepage, directly or indirectly, to the soil or into the water environment.”.

#### **Amendment of regulation 10**

- 5.—(1) Regulation 10 (temporary storage of solid manure) is amended as follows.

- (2) For paragraph (2), substitute—

“(2) No field heap may be located—

- (a) within 10 metres of any body of surface water;
- (b) within 50 metres of any well, borehole or similar work sunk into underground strata for the purpose of providing a water supply;
- (c) on any area of land that—
  - (i) slopes down toward a body of surface water; and
  - (ii) has a slope of 12 degrees or more;
- (d) in any area identified on the risk assessment map prepared under regulation 5(4) as being of high risk to the water environment; or
- (e) in any other location where there is a significant risk of nitrogen from the field heap entering a body of surface water.”.

#### **Amendment of regulation 12**

- 6.—(1) Regulation 12 (maximum application of nitrogen fertiliser) is amended as follows.

- (2) For paragraph (4), substitute—

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(a) Third Edition, January 2011 - ISBN 978 0 580 65307 0.  
 (b) S.S.I. 2003/531, as amended by S.S.I. 2006/133 and S.S.I. 2008/54.

“(4) Before planting any crop which is not referred to in paragraph (2) or (3), the maximum amount of nitrogen fertiliser which can be applied to that crop shall be calculated in accordance with the recommendations for that crop type specified in—

- (a) the Scottish Agricultural College’s Technical Note TN651 (Nitrogen recommendations for cereals, oilseed rape and potatoes)(a);
- (b) the Scottish Agricultural College’s Technical Note TN623 (Fertiliser recommendations for soft fruit and rhubarb crops)(b); or
- (c) the Scottish Agricultural College’s Technical Note TN649 (Fertiliser recommendations for vegetable, minority arable crops and bulbs)(c),

and no nitrogen shall be applied in excess of that figure.”.

(3) After paragraph (6), insert—

“(7) Where the calculation of the maximum amount of nitrogen fertiliser that may be applied on the farm to a crop has been adjusted upwards in accordance with paragraph (2)(c) and Schedule 3 based on an expected yield, the expected yield must be based upon—

- (a) evidence of historic yields previously achieved by that crop at that farm; or
- (b) where a new crop management system is to be introduced for that crop at that farm, evidence from another farm within the same nitrate vulnerable zone with similar soil type and soil nutrient status of historic yields previously achieved by that crop at that other farm using that crop management system.”.

#### **Amendment of regulation 15**

7.—(1) Regulation 15 (annual field limit of nitrogen in organic manure) is amended as follows.

(2) In paragraph (1), after the words “organic manure” where they appear on both occasions, insert—

“(other than compost)”.

(3) After paragraph (1), insert—

“(1A) Compost shall not be applied to any field where the application would result in the total nitrogen contained in organic manure (including compost) applied to any field in any 24 month period exceeding a rate of 500 kg per hectare, excluding that deposited by animals whilst grazing.”.

#### **Amendment of regulation 20**

8.—(1) Regulation 20 (closed periods for organic manure with high available nitrogen content) is amended as follows.

(2) In sub-paragraph (b) of paragraph (1), for “15th October and 15th January” substitute—

“15th October and 31st January”.

(3) In sub-paragraph (d) of paragraph (1), for “1st October and 15th January” substitute—

“1st October and 31st January”.

#### **Amendment of regulation 25**

9.—(1) Regulation 25 (records to be kept) is amended as follows.

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(a) <http://www.sruc.ac.uk/tn651> (March 2013).

(b) [http://www.sruc.ac.uk/downloads/download/211/tn623\\_fertiliser\\_recommendations\\_for\\_soft\\_fruit\\_and\\_rhubarb\\_crops](http://www.sruc.ac.uk/downloads/download/211/tn623_fertiliser_recommendations_for_soft_fruit_and_rhubarb_crops) (November 2009).

(c) <http://www.sruc.ac.uk/tn649> (March 2013).

- (2) After sub-paragraph (g) of paragraph (1), insert—  
“and  
(h) the location of any field heaps.”.

**Amendment of regulation 26**

- 10.**—(1) Regulation 26 (records to be retained) is amended as follows.  
(2) For “5 years” substitute “3 years”.

**Amendment of Schedule 3**

- 11.**—(1) In Schedule 3 (calculation of maximum nitrogen application to crops), Table 5 (percentage nitrogen content taken up by a crop per given quantity of livestock manure) is amended as follows.  
(2) In Column 3, in the line regarding cattle slurry, for “35%” substitute “40%”.  
(3) In Column 3, in the line regarding pig slurry, for “45%” substitute “50%”.

*RICHARD LOCHHEAD*  
A member of the Scottish Government

St Andrew's House,  
Edinburgh  
4th April 2013

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008 (“the 2008 Regulations”).

They do so in further implementation, as regards Scotland, of Article 5 of Council Directive 1991/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ No. L 375, 31.12.91, p.1). Article 5 requires Member States to establish, review and, if necessary, revise action programmes for designated nitrate vulnerable zones.

These regulations revise the action programme established by the 2008 Regulations for the nitrate vulnerable zones in Scotland designated by regulation 3 of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002 (S.S.I. 2002/276) and regulation 3 of the Designation of Nitrate Vulnerable Zones (No. 2) (Scotland) Regulations 2002 (S.S.I. 2002/546).

These Regulations amend regulation 6 so that the provisions of that regulation, which concern the storage of livestock manure, also apply to silage effluent.

They amend regulation 12 to specify maximum nitrogen fertiliser amounts for certain crops by reference to Technical Notes published by the Scottish Agricultural College. They also amend Regulation 12 to provide that the expected yield, upon the basis of which adjustments to the maximum permitted amount of nitrogen fertiliser may be made, must be based upon evidence of historic yields previously achieved by the same crop at the same farm. Where a new crop management system is to be introduced, the expected yield may be based upon evidence of historic yields from another farm using that system, provided that other farm is within the same nitrate vulnerable zone and has similar soil.

They amend regulation 15 to alter the field limit of nitrogen in organic manure where compost is used.

They amend regulation 20 to alter the closed periods for organic manure with a high available nitrogen content.

They amend regulation 25 to add a requirement for the occupier of a farm in a nitrate vulnerable zone to keep a record of the location of any field heaps.

They amend regulation 26 to reduce from 5 years to 3 years the period for which the records specified in regulation 25 must be retained.

They amend Schedule 3 to increase the specified percentages of nitrogen content taken up by a crop per given quantity of cattle slurry and pig slurry.

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