

## 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 allow the planting of the following year's crop before the end of winter.

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

(4) In this paragraph, "winter" means the period beginning on the day after the crop has been harvested and ending on the last day of February in the following calendar year.

###### *Minimum land management reflecting site-specific conditions*

###### Wind erosion

2.—(1) 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.

(2) In this paragraph, "spring" means the period beginning on 1st March and ending on 31st May in any calendar year.

###### 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 have run together when wet, and then dried so as to form a crust on the surface of the soil; and “cap” is to be construed accordingly.

### **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 within—

- (a) 10 metres of a gateway; or
- (b) 3 metres of a farm track which requires to be 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 after that in which erosion first occurred.

(2) In this paragraph, “heavy poaching” means the cutting up of turf to a significant degree as a result of 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) does 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 submitted under Article 19 of the Council Regulation; or
- (b) in any other prior application submitted for a direct payment.

### **Muirburning**

6. A farmer must comply with the requirements of the Muirburn Code<sup>(1)</sup>.

## **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 in 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.

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(1) Published in 2011 by the Scottish Government and available from the Scottish Government Rural Directorate, Victoria Quay, Edinburgh EH6 6QQ.

### *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 and appropriate regimes*

#### **Undergrazing**

- 10.—(1) A farmer must not allow undergrazing of land.
- (2) Where undergrazing 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 any undergrazing, land is not undergrazed if the land is 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.
- (2) Where a farmer can demonstrate to the satisfaction of the Scottish Ministers that appropriate action has been taken, he or she will not be taken to have allowed overgrazing, 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, and in the case of an incursion of significant numbers of such deer the farmer can show that advice has been taken from Scottish Natural Heritage and that advice has been acted upon; or
  - (c) rabbits, where the farmer can show that appropriate control methods have been used.
- (3) Where overgrazing 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.
- (4) Subject to sub-paragraph (5), in this paragraph “overgrazing” means grazing land with livestock or other animals in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.
- (5) There is no overgrazing for the purposes of this paragraph if the land is capable of recovering to the extent that the growth quality or species composition of vegetation would no longer be adversely affected to a significant degree by any time during the growing season in the calendar year after the land first became overgrazed.

*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 Article 39 of Council Regulation 1698/2005(2);
- (b) approval under the EIA Agriculture Regulations; or
- (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 in consequence of its status as a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(3).

**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 EIA Agriculture Regulations.

(2) In this paragraph and paragraph 14, “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.

(2) OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation (EC) No 473/2009, (OJ L 144, 9.6.2009, p.3).

(3) S.I. 1994/2716, relevantly amended by S.S.I. 2007/80.

### **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 EIA Agriculture 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 pesticides, to control injurious weeds to which the Weeds Act 1959<sup>(4)</sup> applies;
- (d) to control bracken with pesticides approved in accordance with the Control of Pesticides Regulations 1986<sup>(5)</sup> or the Plant Protection Products Regulations 2011<sup>(6)</sup>; or
- (e) to control other plants, subject to the prior written consent of the Scottish Ministers.

#### *Retention of landscape features*

### **Boundary features**

**15.—**(1) Subject to sub-paragraph (3), 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) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) A farmer must not trim a hedge during the period beginning on 1st March and ending on 31st July in any calendar year, except—

- (a) for the purposes of hedgelaying up to and including 31st March; or
- (b) to the extent necessary for the purposes of road safety at any time during that period.

(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.

(5) In this paragraph, “hedgelaying” means a traditional method of cultivating hedges where tall saplings are partly cut through near the base and then bent over so that they lie horizontally and make a thick barrier.

### **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—

- (a) the Scottish Ministers; or
- (b) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) In this paragraph, “deterioration” means—

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<sup>(4)</sup> 1959 c.54.

<sup>(5)</sup> S.I. 1986/1510, as amended by S.I. 1997/188, S.I. 2001/880 and S.I. 2011/2131.

<sup>(6)</sup> S.I. 2011/2131.

- (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—

- (a) a monument 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<sup>(7)</sup>, without prior scheduled monument consent<sup>(8)</sup> 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<sup>(9)</sup>, 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 (Development Management Procedure) (Scotland) Regulations 2008<sup>(10)</sup>, in respect of which consultation is required before any grant of planning permission under regulation 25 of, and Schedule 5 to, those Regulations.

*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) In respect of land managed under an agri-environmental scheme funded under the Scotland Rural Development Programme 2007 to 2013, 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;
  - (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

<sup>(7)</sup> 1979 c.46.

<sup>(8)</sup> 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).

<sup>(9)</sup> 1997 c.9.

<sup>(10)</sup> S.S.I. 2008/432 as relevantly amended by S.S.I. 2011/377.

- (b) where there is no degradation of the environmental and agricultural value of the land and the farmer has, prior to that encroachment, declared the environmental gain to be achieved—
  - (i) in the farmer's aid application submitted under Article 19 of the Council Regulation;  
or
  - (ii) in any other prior application submitted for a direct payment.

## PART V

### Protection and management of water

*Protect water against pollution and run-off, and manage the use of water*

#### Water abstraction

**19.**—(1) For the purposes of Article 6 of, and Annex III to, the Council Regulation, a farmer carrying out abstraction of water for irrigation must comply with the authorisation procedures set out in Part II of the Water Environment (Controlled Activities) (Scotland) Regulations 2011<sup>(11)</sup>.

(2) In this paragraph, “abstraction” has the same meaning as it has in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003<sup>(12)</sup>.

#### Establishment of buffer strips along water courses

**20.**—(1) Organic manure must not be applied to any land which is situated within—

- (a) 10 metres of any surface water; or
  - (b) 50 metres of any well, borehole or similar work sunk into underground strata for the purposes of any water supply.
- (2) No field heap is to be located within—
- (a) 10 metres of any surface water; or
  - (b) 50 metres of any well, borehole or similar work sunk into underground strata for the purposes of any water supply.

(3) Chemical fertiliser must not be applied to any land in any case, location or manner that makes it likely that the fertiliser will directly enter any surface water.

(4) Nitrogen fertiliser must not be applied to any land if there is a significant risk of nitrogen entering surface water, taking into account—

- (a) the slope of the land, particularly if greater than 12 degrees;
- (b) any ground cover;
- (c) proximity to any surface water;
- (d) weather conditions; and
- (e) the type of fertiliser being applied.

(5) In this paragraph—

- (a) “organic manure” means—
  - (i) livestock manure; and

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<sup>(11)</sup> S.S.I. 2011/209.

<sup>(12)</sup> 2003 asp 3, amended by S.S.I. 2005/348.

- (ii) nitrogen fertiliser, not being livestock manure or chemical fertiliser, derived from organic matter,  
and includes sewage sludge and other organic wastes;
- (b) “chemical fertiliser” means nitrogen fertiliser which is manufactured by an industrial process;
- (c) “nitrogen fertiliser” means any substance containing a nitrogen compound utilised on land to enhance growth or vegetation; and
- (d) “surface water” has the same meaning as it has in section 3(3) of the Water Environment and Water Services (Scotland) Act 2003.