

**2008 No. 54**

**ENVIRONMENTAL PROTECTION**

**WATER**

**The Water Environment (Diffuse Pollution) (Scotland)  
Regulations 2008**

<i>Made</i> - - - -	<i>20th February 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>21st February 2008</i>
<i>Coming into force</i> - -	<i>1st April 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20 and 36(3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(a) and all other powers enabling them to do so.

In accordance with section 21(1) of that Act they have consulted with the persons specified therein.

In accordance with section 21(2) of that Act, they have published a draft of the proposed general binding rules and have had regard to the representations received about the proposed rules in accordance with section 21(4) of that Act.

The Scottish Ministers have complied with the other requirements of section 21 of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008 and come into force on 1st April 2008.

**Amendment of the Water Environment (Controlled Activities) (Scotland) Regulations 2005**

2. The General Binding Rules in Part 1 of Schedule 3 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005(b) are modified in accordance with the Schedule.

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(a) 2003 asp 3; section 20 was amended by regulation 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) and Schedule 2 was amended by section 66 of, and paragraph 6 of Schedule 2 to, the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).  
(b) S.S.I. 2005/348; amended by S.S.I. 2006/553 and 2007/219.

### **Amendment of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003**

3. The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(a) are amended as follows—

- (a) in regulation 1(2), (citation, commencement, interpretation and extent)—
  - (i) insert the following definitions in the appropriate places alphabetically—
    - ““constructed farm wetland” means a series of one or more ponds for the treatment of—
      - (a) slurry of a type specified in regulation 3(4); or
      - (b) silage effluent consisting mainly of rainwater, which have been constructed in such a manner that any discharge from the ponds will not pollute the water environment;
    - “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);
    - “pesticide” has the same meaning as in section 16 of the Food and Environment Protection Act 1985(b);”;
  - (ii) omit “and” where it immediately precedes the defined term “slurry storage tank”;
  - (iii) immediately after the words “storage of slurry” where they occur in the definition of “slurry storage tank” insert—
    - “; and
    - “water environment” has the same meaning as it has in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).”.
- (b) in regulation 3, (storage of slurry)—
  - (i) in paragraph (1) after “paragraph (2)” insert “ and (3)”;
  - (ii) after paragraph (2) insert—
    - “(3) Paragraph (1) shall not apply to slurry of a type specified in paragraph (4) if such slurry is drained to a constructed farm wetland.
    - (4) The type of slurry referred to in paragraph (3) is slurry which consists mainly of rainwater and washings which derive from—
      - (a) a midden, which contains in a substantial majority farm yard manure and is situated where its contents can be affected directly by precipitation;
      - (b) an area or pathway where that area or pathway can be directly affected by precipitation, is used by livestock to move from one area to another, but is not used for the movement of livestock to or from an area where they are—
        - (i) milked;
        - (ii) housed;
        - (iii) fed; or
        - (iv) gathered or held prior to or after any of the activities referred to in paragraphs (i) to (iii);
    - (c) an area which—
      - (i) can be directly affected by precipitation;
      - (ii) is used for the gathering or holding of livestock for periods of 24 hours or less; and
      - (iii) is not an area falling within paragraph (5).

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(a) S.S.I. 2003/531; amended by S.S.I. 2006/133.

(b) 1985 c.48.

- (5) An area falls within this paragraph if livestock are gathered or held on it–
  - (a) more regularly than once a week; or
  - (b) for any of the purposes referred to in paragraph (4)(b)(i) to (iv).
- (6) Slurry which contains pesticide shall not be permitted to drain to a constructed farm wetland.”.
- (c) in Schedule 1 (requirements for silos)–
  - (i) in paragraph 2, after the words “channel or pipe” insert–
    - “and (if so desired) to a constructed farm wetland in compliance with paragraph 10 through a separate channel or pipe;”;
  - (ii) after paragraph 2 insert–
    - “**2A.** No silage effluent shall be drained to a constructed farm wetland from an effluent tank.”.
  - (iii) after paragraph 9 insert–
    - “**10.** Silage effluent which consists mainly of rainwater shall be drained from the silo to a constructed farm wetland only if–
      - (a) the drainage takes place during the period between 1st November in one year and 30th April in the next year; and
      - (b) no crop which is being made into silage has been added to that silo during that period.”.

*MICHAEL RUSSELL*  
 Authorised to sign by the Scottish Ministers

St Andrew’s House,  
 Edinburgh  
 20th February 2008

## 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—

<p>“ <b>18.</b> The storage and application of fertiliser other than where it is regulated by:</p> <ul style="list-style-type: none"> <li>(a) the Sludge (Use in Agriculture) Regulations 1989<b>(a)</b>;</li> <li>(b) a waste management licence in terms of section 35 of the Environmental Protection Act 1990<b>(b)</b>;</li> <li>(c) the registration of a registered exemption, under the Waste Management Licensing Regulations 1994<b>(c)</b>; or</li> <li>(d) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003<b>(d)</b>.</li> </ul>	<ul style="list-style-type: none"> <li>(a) no fertiliser shall be stored on land that—           <ul style="list-style-type: none"> <li>(i) is within 10 metres of any surface water or wetland;</li> <li>(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;</li> <li>(iii) is waterlogged; or</li> <li>(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;</li> </ul> </li> <li>(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;</li> <li>(c) no organic fertiliser shall be applied to land that—           <ul style="list-style-type: none"> <li>(i) is within 2 metres of any drainage ditch or within 5 metres of any other surface water or wetland;</li> </ul> </li> </ul>
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(a) S.I. 1989/1263; relevant amending instruments are S.I. 1990/880, S.I. 1996/973 and S.S.I. 2000/62.  
 (b) 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.  
 (c) S.I. 1994/1056; relevant amending instrument is S.S.I. 2006/541.  
 (d) S.S.I. 2003/531; amended by S.S.I. 2006/133.

	<ul style="list-style-type: none"> <li>(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;</li> <li>(iii) is sloping with an overall gradient in excess of 15°, or 25° on uncultivated land designated for forestry;</li> <li>(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</li> <li>(v) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow;</li> </ul> <p>(d) no inorganic fertiliser shall be applied to land that–</p> <ul style="list-style-type: none"> <li>(i) is within 2 metres of any surface water or wetland;</li> <li>(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;</li> <li>(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</li> <li>(iv) is frozen, waterlogged, or covered with snow;</li> </ul> <p>(e) fertilisers shall not be applied to land in excess of the nutrient needs of the crop;</p> <p>(f) any equipment used to apply fertiliser shall be maintained in a good state of repair; and</p> <p>(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.</p>
<p><b>19. Keeping of livestock.</b></p>	<p>(a) significant erosion or poaching of any land that is within 5 metres of surface water or wetland shall be prevented;</p>

	<p>(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</p> <p>(c) livestock feeders shall not be positioned within 10 metres of any surface water or wetland.</p>
<b>20. Cultivation of land.</b>	<p>(a) no land shall be cultivated for crops that is–</p> <p>(i) within 2 metres of any surface water or wetland;</p> <p>(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</p> <p>(iii) waterlogged;</p> <p>(b) moling of land shall not be permitted on slopes with an overall gradient in excess of 4.5°; and</p> <p>(c) land shall be cultivated in a way that minimises the risk of pollution to the water environment.</p>
<b>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.</b>	<p>(a) water shall be discharged in a way which minimises the risk of pollution to the water environment; and</p> <p>(b) no discharge from drainage shall result in the destabilisation of the banks or bed of the receiving surface water.</p>
<b>22. Construction and maintenance of waterbound roads and tracks.</b>	<p>(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.</p>

<p><b>23. The application of pesticide.</b></p>	<ul style="list-style-type: none"> <li>(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;</li> <li>(b) pesticide spraying equipment shall be maintained in a good state of repair;</li> <li>(c) pesticide sprayers shall not be filled with water taken from the water environment unless— <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system; or</li> <li>(ii) the water is first placed in an intermediate container; and</li> </ul> </li> <li>(d) pesticide-treated plants shall not be soaked in any part of the water environment.</li> </ul>
<p><b>24. Operating sheep dipping facilities.</b></p>	<ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(c) sheep dipping facilities shall not discharge underground and shall not leak or overspill;</li> <li>(d) sheep dipping facilities shall not be filled with water taken from the water environment unless— <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system; or</li> <li>(ii) the water is first placed in an intermediate container; and</li> </ul> </li> <li>(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.</li> </ul>

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 brash;

“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(a);

“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.”.

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(a) 1985 c.48.



## EXPLANATORY NOTE

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

These Regulations, made under sections 20 and 36(3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003 (asp 3), make amendments to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) (CAR) and to the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (S.S.I. 2003/531) (SSAFO).

Schedule 3 of CAR is amended to effect changes to the General Binding Rules contained there by adding as Rule 18 to 24, General Binding Rules relating to the control of diffuse pollution, and in particular—

- (a) the storage and application of fertiliser;
- (b) the keeping of livestock;
- (c) land cultivation;
- (d) the discharge of water run off via a surface water drainage system;
- (e) the construction and maintenance of certain types of road and track;
- (f) the application of pesticides; and
- (g) the operating of sheep dipping facilities.

Regulation 3 of SSAFO is amended through the addition of 4 new paragraphs which provide for an alternative form of disposal for certain types of slurry. Schedule 1 of SSAFO is amended through the addition of provisions which provide for an alternative form of disposal for a certain type of silage effluent. Regulation 1 of SSAFO is amended in order to accommodate such changes.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from Water, Air, Soils and Flooding Division, Victoria Quay, Edinburgh EH6 6QQ.





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**WATER**

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