
STATUTORY INSTRUMENTS

1992 No. 52

AGRICULTURE

**The Environmentally Sensitive Areas
(South Downs) Designation Order 1992**

<i>Made</i>	- - - -	<i>15th January 1992</i>
<i>Laid before Parliament</i>		<i>15th January 1992</i>
<i>Coming into force</i>	- -	<i>5th February 1992</i>

Whereas, as mentioned in section 18(1) of the Agriculture Act 1986⁽¹⁾, it appears to the Minister of Agriculture, Fisheries and Food (“the Minister”) that it is particularly desirable—

(1) to conserve and enhance the natural beauty of the area referred to in article 3 of the following Order;

(2) to conserve the flora and fauna and geological and physiographical features of that area; and

(3) to protect buildings and other objects of historic interest in that area;

And whereas, as mentioned in the said section 18(1) it appears to the Minister that the maintenance and adoption of the agricultural methods specified in Schedule 1 to the following Order is likely to facilitate the aforementioned conservation, enhancement and protection;

Now, the refore, the Minister, in exercise of the powers conferred on him by section 18(1) and (4) of the said Act, and of all other powers enabling him in that behalf, with the consent of the Treasury and after consultation with the Secretary of State, the Countryside Commission and the Nature Conservancy Council for England⁽²⁾ as to the inclusion of the area referred to in article 3 of this Order and the features of that area for which conservation, enhancement and protection are desirable, hereby makes the following Order:

Title and commencement

1. This Order may be cited as the Environmentally Sensitive Areas (South Downs) Designation Order 1992 and shall come into force on 5th February 1992.

Interpretation

2.—(1) In this Order—

⁽¹⁾ 1986 c. 49. The expression “the Minister” is defined in section 18(11).

⁽²⁾ The provisions in section 18 of the Agriculture Act 1986 concerning Nature Conservancy Councils were amended by Part VII of, and Schedule 9 to, the Environmental Protection Act 1990 (c. 43).

“agreement” means an agreement under section 18(3) of the Agriculture Act 1986 as respects agricultural land in the area designated by article 3;

“chalk downland” means grassland situated on undulating chalk hills;

“farmer” means a person who has an interest in agricultural land in the area designated by article 3 and who also has entered into an agreement with the Minister;

“grassland” means land on which the vegetation consists primarily of grass species and includes meadowland, chalk downland and rough grazing;

“river valley grassland” means grassland other than chalk downland situated within a river valley;

“strip” means a strip of land at least 6 metres wide located at the edge of a field used for the production of arable crops.

(2) Any reference in this Order to a numbered article or Schedule shall be construed as a reference to the article or Schedule bearing that number in this Order.

Designation of environmentally sensitive area

3. There is hereby designated as an environmentally sensitive area the area of land in the South Downs in the Counties of Hampshire and East and West Sussex which is shown coloured yellow on the maps contained in the volume of maps marked “volume of maps of South Downs environmentally sensitive area” dated 13th January 1992 signed and sealed by the Minister and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, 17 Smith Square, London SW 1P 3HX.

Requirements and provisions of agreement

4. An agreement shall include the requirements specified in Schedule 1 as to agricultural practices, methods and operations and the installation and use of equipment.

Breach of requirements or provisions

5. An agreement shall include provisions that—

- (a) in the event of a breach by the farmer of the requirements referred to in article 4, the Minister may give the farmer notice in writing terminating the agreement forthwith and may recover from the farmer as a debt an amount equivalent to the payments made by the Minister under the agreement or such part thereof as the Minister may specify;
- (b) any question arising under an agreement as to whether there has been a breach of any of the requirements referred to in article 4 shall be referred to and determined by a single arbitrator to be agreed between the parties or in default of agreement to be appointed by the President of the Royal Institution of Chartered Surveyors and in accordance with the provisions of the Arbitration Act 1950(3) or any statutory modification or re-enactment thereof for the time being in force.

Rates of payment under agreement

6.—(1) The Minister shall make payments under an agreement at the rate of £40 per annum for each hectare of grassland to which the agreement relates.

(2) Where an agreement includes the additional provisions set out in one or more of the options contained in Schedule 2, the Minister shall make payments at the rate per annum for each hectare of land which under the agreement is subject to those provisions shown in the following table—

(3) 1950 c. 27.

Option	£ per hectare of land per annum
1	240
2	200
3	60

(3) Where an agreement includes one or more of the conservation plan operations specified in Schedule 3, the Minister shall make payments according to the operations which are carried out at a rate not exceeding £75 per annum for each hectare of land to which the agreement relates, subject to a maximum of £3000 per agreement.

Revocation and saving

7. The Environmentally Sensitive Areas (South Downs) Designation Order 1986 and the Environmentally Sensitive Areas (South Downs —Western Extension) Designation Order 1987(4) are hereby revoked, except that the provisions of those Orders shall continue to apply to agreements made in relation to them on or before 31st December 1991.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 14th January 1992.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

We consent

Thomas Sackville
Nicholas Baker
Two of the Lords Commissioners of Her
Majesty's Treasury

15th January 1992

(4) [S.I. 1986/2249](#) and [S.I. 1987/2032](#) respectively. Both were amended by [S.I. 1988/174](#).

SCHEDULE 1

Article 4

REQUIREMENTS TO BE INCLUDED IN AGREEMENT

1. As regards any chalk downland which is the subject of an agreement—

The farmer shall maintain grassland and shall not plough, chain harrow, roll, level, reseed or otherwise cultivate it.

2. As regards any river valley grassland which is the subject of an agreement—

(1) The farmer shall maintain grassland and shall not plough, level or re-seed or otherwise cultivate it. The farmer shall not use a chain harrow or roller between 31st March and 1st July in any year.

(2) Where the maintenance of water levels is within the farmer's control, the farmer shall ensure that—

- (a) between 31st March and 1st October in any year ditch water levels are not less than 30 centimetres and not more than 60 centimetres below grassland level, and
- (b) ditches are not allowed to dry out completely.

3. As regards all land which is the subject of an agreement—

(1) The farmer shall graze with cattle or sheep but not so as to cause poaching, undergrazing or overgrazing.

(2) The farmer shall not cut grass for hay or silage nor top the grass before 16th July in any year.

(3) The farmer shall not apply any organic or inorganic fertiliser.

(4) The farmer shall not use fungicides or insecticides.

(5) The farmer shall not apply herbicides except to control nettles, spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort or for stump treatment of cleared scrub. Herbicides used for these purposes shall be applied by hand-held weed wiper or by spot treatment with a knapsack sprayer.

(6) The farmer shall not apply lime or slag or any substance designed to reduce the acidity of the soil.

(7) The farmer shall not install any new drainage system or substantially modify any existing drainage system.

(8) The farmer shall not fill in any existing ditches and shall maintain them by mechanical means. The farmer shall level spoil after allowing it to dry.

(9) The farmer shall restrict supplementary feeding of livestock to areas agreed in advance with the Minister.

(10) The farmer shall protect and maintain dewponds, reedbeds and ponds.

(11) The farmer shall maintain stockproof walls and hedges in a stockproof condition using traditional materials.

(12) The farmer shall maintain any weatherproof field barn for which he is responsible in a weatherproof condition using traditional materials.

(13) The farmer shall not damage or destroy any feature of historic interest.

(14) The farmer shall obtain written advice on siting and materials from the Minister before constructing buildings or roads or before undertaking any other engineering or construction operations which do not require prior notification determination by the local planning authority under the Town and Country Planning General Development Order 1988(5), or planning permission.

(5) [S.I. 1988/1813](#). The relevant amending instrument is [S.I. 1991/2268](#).

(15) The farmer shall obtain written advice from a person approved by the Minister on the management of any woodland, trees or scrub or proposals to plant new woodland.

SCHEDULE 2

Article 6(2)

ADDITIONAL PROVISIONS

Option 1 – Chalk Downland Reversion

1. As regards any land which is the subject of an agreement which is suitable for reversion to chalk downland which–

- has been converted from arable to grassland under a previous agreement, or
- on 31st August 1991, was in arable cropping or had been in ley management for less than five years as part of an arable rotation–

- (1) The farmer shall cease arable or intensive grassland production and shall establish a grassland sward within twelve months of the start of the agreement using seed from native grass species approved by the Minister.
- (2) During a period of twelve months from the start of the agreement the farmer shall not apply–
 - (a) any organic or inorganic fertiliser,
 - (b) lime, slag or any substance designed to reduce the acidity of the soil,
 - (c) any pesticidewithout obtaining the Minister’s prior approval.
- (3) During each of the three years following grassland establishment, the farmer shall cut the grassland sward, remove the cuttings as hay or silage and graze the aftermath. He shall not make the first cut before 16th July in any year.

2. The farmer shall observe the requirements of Schedule 1 paragraph 3 from the commencement of the agreement. After the expiry of the twelve month period referred to in paragraph 1(2) above, he shall also observe the requirements of Schedule 1 paragraph 1 except that he may cultivate the grassland sward using a chain harrow or roller during the three years from the start of the agreement.

Option 2 – Permanent Grassland Reversion

1. As regards any land which is the subject of an agreement which is suitable for conversion from arable to permanent grassland and which–

- has been converted from arable to grassland under a previous agreement, or
- on 31st August 1991, was in arable cropping or had been in ley management for less than five years as part of an arable rotation–

- (1) Except where reversion to grassland has already taken place, the farmer shall cease arable production and establish a grassland sward within twelve months of the start of the agreement.
- (2) During a period of twelve months from the start of the agreement the farmer shall not apply–
 - (a) any organic or inorganic fertiliser,
 - (b) lime, slag or any substance designed to reduce the acidity of the soil,

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- (c) any pesticide
without obtaining the Minister's prior approval.

2. The farmer shall observe the requirements of Schedule 1 paragraph 3 from the commencement of the agreement. After the expiry of the twelve month period referred to in paragraph 1(2) above, he shall observe the requirements of Schedule 1 paragraph 1 (in relation to chalk downland), or Schedule 1 paragraph 2 (in relation to river valley grassland).

Option 3 – Conservation Headlands

3. As regards any strip which is the subject of an agreement–
- (1) The farmer shall not apply insecticides except between 31st August in any year and the following 1st January.
 - (2) The farmer shall not apply herbicides to the strip other than–
 - (a) Tri-allate, diclofop–methyl, difenzoquat, flamprop–M–isopropylbenzoyl propethyl or fenoxapropethyl;
 - (b) Glyphosate, provided that it is applied in the pre-harvest period by spot treatment and solely for the control of couch, black bent or onion couch;
 - (c) Fluroxypyr, provided it is applied by spot treatment and solely for the control of cleavers;
or
 - (d) any other herbicide applied by any method which the Minister may from time to time approve for this purpose.
 - (3) The farmer may cultivate and apply herbicides to that part of the strip which adjoins a field boundary where it is desirable so to do in order to maintain a sterile area.

SCHEDULE 3

Article 6(3)

CONSERVATION PLAN OPERATIONS

- 1. The rebuilding of flint walling using traditional materials.
- 2. The planting, laying or coppicing of hedges.
- 3. The renovation of barns using traditional materials.
- 4. The management of scrub.
- 5. The provision of fencing and water supplies for livestock where the farmer is establishing new grazing patterns in accordance with Schedule 2 Option 1 or 2.
- 6. The construction of water level penning structures such as bunds and sluices in order to raise ditch water levels.
- 7. The creation or restoration of ponds, scrapes, ditches and reedbeds.
- 8. Works to protect historic and archaeological features.
- 9. Works designed to restore or create landscape features or features for the benefit of wildlife in a manner compatible with the enhancement of the environment.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 18 of the Agriculture Act 1986 (“the 1986 Act”) gives the Minister of Agriculture, Fisheries and Food (“the Minister”) power to designate an area in England as an environmentally sensitive area where it appears to him particularly desirable to conserve, protect or enhance environmental features in that area by the maintenance or adoption of particular agricultural methods.

This Order, which complies with Title VII of Council Regulation (EEC) 2328/91 (OJNo. L 218, 6.8.91, p.1) on improving the efficiency of agricultural structures, designates an area in the South Downs as an environmentally sensitive area (article 3). The previous designations of an environmentally sensitive area in the South Downs are revoked, though with savings provisions (article 7). The newly designated area is defined by reference to maps which are available for inspection during normal office hours at the offices of the Ministry of Agriculture, Fisheries and Food at Nobel House, 17 Smith Square, London SW 1P 3HX.

Section 18(3) of the 1986 Act enables the Minister to enter into a management agreement with any person having an interest in agricultural land in a designated area if the Minister considers that conservation of environmental features in that area may be facilitated. The Order specifies requirements as to agricultural practices, methods and operations and the installation or use of equipment which must be included in such an agreement (article 4 and Schedule 1).

The Order also contains provisions for recovery of sums paid under an agreement by the Minister in the event of a breach of the specified requirements, and for the determination by arbitration of any questions as to whether a breach of those requirements has occurred (article 5). The rates of payment to be made by the Minister under an agreement are set out (article 6) including the rates applicable to an agreement which contains additional provisions designed to attract higher rates of payment. These additional provisions are set out in Schedules 2 and 3.