
STATUTORY INSTRUMENTS

1993 No. 2767 (S.255)

AGRICULTURE

**The Environmentally Sensitive Areas
(Central Borders) Designation Order 1993**

Made - - - - *2nd November 1993*
Laid before Parliament *17th November 1993*
Coming into force - - *8th December 1993*

Whereas, as referred to in section 18(1) of the Agriculture Act 1986⁽¹⁾, it appears to the Secretary of State 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 archaeological interest in that area;

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

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 18(1), (4) and (11) of the said Act, and of all other powers enabling him in that behalf, with the consent of the Treasury and after consultation with Scottish Natural Heritage as to the inclusion of the area referred to in article 3 of the following Order and the features for which conservation, enhancement and protection are desirable, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Environmentally Sensitive Areas (Central Borders) Designation Order 1993 and shall come into force on 8th December 1993.

Interpretation

- 2.—(1) In this Order—
“agreement” means an agreement under section 18(3) of the Agriculture Act 1986 as regards land in the area designated by article 3;

(1) 1986 c. 49; see paragraph 12 of Schedule 10 to the Natural Heritage (Scotland) Act 1991 (c. 28).

“amenity woodland” means small scale woodland planted and maintained primarily for improvement of the landscape;

“conservation plan” means a layout plan (or plans) which categorises all the land on the farm, identifies areas subject to specific management measures and indicates the lines or sites of features to be protected or maintained and an attached (written) statement which outlines the specific management measures to be taken to protect or enhance the areas identified in the plan (or plans);

“farm business” means a business or part of a business which engages in agricultural production for the purposes of trade;

“farmer” means a person who has an interest in agricultural land in the area designated by article 3 and who enters or has entered into an agreement with the Secretary of State;

“grazing plan” means a written description of the time, duration and density at which livestock will be permitted access to grazing land and the action required to achieve such access;

“heather moorland” means areas of land in which heather (*calluna vulgaris*) and other dwarf shrubs (including bell heather (*erica cinerea*), cross-leaved heath (*erica tetralix*), crowberry (*empetrum nigrum*), blaeberry (*vaccinium myrtillus*), bog myrtle (*myrica gale*)) occur throughout the vegetation;

“herb rich grassland” means land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute rough grazing, but which is floristically diverse;

“make muirburn” has the same meaning as in section 39(1)(f) of the Hill Farming Act 1946(2);

“modifying existing drains” means deepening existing ditches or culverts, re-cutting hill grips or altering outfalls from under drainage systems;

“native woodland” means self-seeded woodland of native species or woodland derived from an originally naturally occurring woodland;

“new drainage” means cutting new grips or ditches and laying new tiles or pipes;

“overgrazing” means a deterioration in the condition of vegetation which has been caused by too high a level of grazing either throughout the whole year or at certain vulnerable times of the year;

“reverted improved land” means land, previously improved by agricultural management operations which, from an agricultural viewpoint, has degenerated and is now showing significant presence of plant species indicative of unimproved grassland;

“rough grazings” means land containing semi-natural vegetation including heathland, heather moorland, bog and rough grassland used or suitable for use as grazing;

“scrub” means low growing woody vegetation;

“semi-natural woodland” means native woodland which has been modified by human activity;

“specially identified wetlands” means wetlands which Scottish Natural Heritage have listed as being comparatively undamaged by applications of fertiliser to the surrounding catchment, and which are identified on a map located at the local office of the Scottish Office Agriculture and Fisheries Department, which administers the Central Borders Environmentally Sensitive Area;

“stone fanks” means small enclosures formed by drystone dykes used to gather or shelter stock;

“unimproved pasture” means land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute rough grazing;

“water margins” means an area of ground bordering an area of still or flowing water;

“wetlands” means any ground which is normally saturated with water for a significant proportion of the year.

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

Designation of Environmentally Sensitive Area

3. There is hereby designated as an Environmentally Sensitive Area that area of land within the Ettrick and Lauderdale and Roxburgh Districts of Borders Region which area is shown delineated red and coloured pink on the map marked “Environmentally Sensitive Area–Central Borders” dated 26th October 1993 and signed on behalf of the Secretary of State for Scotland and deposited at the offices of the Scottish Office Agriculture and Fisheries Department, Pentland House, Robb’s Loan, Edinburgh.

Requirements to be included in agreement

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

Provisions as to breach of requirements to be included in agreement

5. An agreement shall include provision that–
- (a) in the event of a breach by the farmer of the requirements referred to in article 4, the Secretary of State may give the farmer notice in writing terminating the agreement forthwith and may recover from the farmer an amount equivalent to the payments made by the Secretary of State under the agreement or such part thereof as the Secretary of State may specify; and
 - (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 arbiter to be agreed between the parties, or in default of agreement to be appointed by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors and in accordance with the provisions of the Arbitration (Scotland) Act 1894(3) or any statutory modification or re-enactment there for the time being in force.

Rates of payment under agreement

6.—(1) Subject to paragraph (2) below, payments made by the Secretary of State under an agreement shall be at the rate of £15 per annum for each hectare of land to which the agreement relates, or at the rate of £1,500 per annum per individual farm business, whichever is the lower.

(2) Payments in respect of farm businesses to which an agreement relates shall be at the rate of not less than £250 per annum per farm business.

7. Where an agreement identifies expenditure required to undertake additional farming operations specified in paragraph 10(b) of the Schedule to this Order, the Secretary of State shall make additional payments according to the farming operations to be carried out. Such payments shall be at a rate to be determined by the Secretary of State, up to a maximum rate of £135 per annum for each hectare of land to which the agreement relates, or at the rate of £5,000 per annum per individual farm business, whichever is the lower.

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Revocation

8. The Environmentally Sensitive Areas (Whitlaw and Eildon) Designation Order 1988(4) is hereby revoked, except that the provisions thereof shall continue to apply to agreements made under that Order before the date of coming into force of this Order.

St. Andrew's House,
Edinburgh
26th October 1993

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

We consent,

2nd November 1993

T J R Wood
Andrew Mackay
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE

Article 4

REQUIREMENTS TO BE INCLUDED IN AN AGREEMENT AS REGARDS LAND WHICH IS THE SUBJECT OF AN AGREEMENT

1. The farmer shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, amenity or native or semi-natural woodland and scrub by land clearance, ploughing, new drainage or modifying existing drains, levelling, re-seeding or cultivating.

2. The farmer shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, amenity or native or semi-natural woodland and scrub by poaching, feeding practices or overgrazing.

3. The farmer shall not apply herbicides, pesticides, lime or fertiliser (including farmyard manure and slurry) to rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, amenity or native or semi-natural woodland and scrub, except that:

- (a) herbicides may be applied to control spear thistle (*cirsium vulgare*), creeping or field thistle (*cirsium arvense*), curled dock (*rumex crispus*), broadleaved dock (*rumex obtusifolius*), or ragwort (*senecio jacobaea*) and, with the prior written approval of the Secretary of State, for the control of other plants; and any herbicides used must be applied by weed wiper, spot treatment or hand spraying or, with the prior written approval of the Secretary of State, by other methods;
- (b) lime and fertiliser may be applied to unimproved pasture and reverted improved land with the prior written approval of the Secretary of State, provided that the level of application does not result in the deterioration or loss of the features of interest.

4. The farmer shall make any muirburn in accordance with the standards set out in the Scottish Natural Heritage leaflet entitled “A Muirburn Code” published in 1993.

5. The farmer shall farm in accordance with the Secretary of State’s Code entitled “Prevention of Pollution from Agricultural Activity: A Code of Good Practice” published in 1992, so as to prevent, or at least minimise, the risk of pollution of the water, air and soil environments.

6. The farmer shall not remove any dykes, walls or hedges unless authorised to do so in writing, by the Secretary of State, and shall maintain stockproof dykes in a stockproof condition and manage existing hedges which are in good condition in the interests of conservation.

7. The farmer shall avoid damaging or destroying any features or areas of historic or archaeological interest and shall follow the Secretary of State’s guidance for the protection of such features or areas.

8. The farmer shall preserve the amenity value of the landscape by screening or removing unsightly waste tips and dumps and by the removal of abandoned vehicles and scrap metal and other rubbish.

9. The farmer shall obtain prior written approval from the Secretary of State before commencing the construction or significant re-alignment or improvement of vehicular tracks.

10. The farmer shall prepare and agree with the Secretary of State a comprehensive farm conservation plan for his land, implement the terms of the plan and keep the operation of the plan under review. Each farm conservation plan will cover a 5 year period of the Scheme and shall—

- (a) identify land and conservation features relevant to the requirements in paragraphs 1 to 9 above;
- (b) if appropriate to the farm unit, contain details of the following farming operations:—
 - (i) a grazing plan and other measures necessary to conserve, enhance or extend areas of wetlands;

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- (ii) a grazing plan and other measures within the catchment necessary to conserve, enhance or extend areas of specially identified wetlands;
- (iii) a grazing plan and other measures necessary to conserve, enhance or extend water margins, the margin of which must be at least 6 metres wide;
- (iv) a grazing plan and other measures necessary to conserve, enhance or extend areas of herb rich grassland;
- (v) a grazing plan and other measures necessary to conserve, enhance or extend areas of amenity or native or semi-natural woodland and scrub and if the farmer so wishes, limited amenity planting of trees;
- (vi) if the farmer so wishes, measures to restore dykes, stone fanks, hedges, hedgerow trees and ponds to standards consistent with conservation interests;
- (vii) if the farmer so wishes, measures to improve the condition of features or areas of historic or archaeological interest;
- (viii) if the farmer so wishes, the creation of extended hedges or grass margins around fields to be used for rotational cropping by–
 - (a) not cropping a strip of at least 2 metres width;
 - (b) not applying chemicals or spreading fertiliser (including slurry) to a headland of at least 8 metres width;
 - (c) applying any other management as appropriate;
- (ix) if the farmer so wishes, the creation of extended hedges around improved grassland fields by–
 - (a) fencing at least 3 metres from the centre line of the hedge;
 - (b) not applying chemicals or spreading fertiliser (including slurry) within 9 metres of the centre line of the hedge;
 - (c) management of the strip in the interests of conservation.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces the Environmentally Sensitive Areas (Whitlaw and Eildon) Designation Order 1988 and designates as an Environmentally Sensitive Area an area of land within the Ettrick and Lauderdale and Roxburgh Districts of Borders Region (article 3). That area is designated for the purpose of conserving, protecting and enhancing environmental features of the area by the maintenance or adoption of particular agricultural methods.

The map annexed to and forming part of this note gives a general guide to the area affected by this Order. The detailed map showing the designated area can be inspected during normal office hours at the offices of the Scottish Office Agriculture and Fisheries Department, Pentland House, Robb's Loan, Edinburgh.

The Secretary of State may enter into a management agreement with any person having an interest in agricultural land in a designated area and the Order specifies the requirements as to agricultural

practices, methods and operations which must be included in such an agreement (article 4 and Schedule).

In the event of a breach of the specified requirements, the Secretary of State may terminate the agreement and recover sums paid under the agreement (article 5(a)). Any questions arising as to whether a breach of such requirements has occurred are to be determined by arbitration (article 5(b)).

Payments made by the Secretary of State under an agreement are to be—

- (a) at the rate of £15 per year per hectare of land; or
- (b) subject to a minimum payment of £250 per year for each individual farm business and a maximum payment of £1,500 per year for each individual farm business (article 6(1) and (2)).

Where an agreement includes the additional farming operations set out in paragraph 10(b) of the Schedule, additional payments are to be made at the rate determined by the Secretary of State subject to a maximum payment of £135 per year per hectare or at the rate of £5,000 per year for each individual farm business, whichever is the lower (article 7).

Copies of the leaflet “A Muirburn Code” published in 1993 may be obtained from Scottish Natural Heritage or the Scottish Office Agriculture and Fisheries Department.

Copies of the “Prevention of Pollution from Agricultural Activity: A Code of Good Practice” published in 1992 may be obtained without charge from the Scottish Office Agriculture and Fisheries Department.

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