
STATUTORY INSTRUMENTS

1993 No. 3149 (S.298)

AGRICULTURE

The Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993

<i>Made</i>	- - - -	<i>13th December 1993</i>
<i>Laid before Parliament</i>		<i>23rd December 1993</i>
<i>Coming into force</i>	- -	<i>13th January 1994</i>

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 (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993 and shall come into force on 13th January 1994.

Interpretation

2.—(1) In this Order—

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

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

“apportioned land” means land which has been apportioned by the Crofters Commission for the exclusive use of a particular crofter under the provisions of section 27(7) of the Crofters (Scotland) Act 1955(2);

“common grazings committee” means a committee appointed under section 24(1) or (3) of the Crofters (Scotland) Act 1955;

“conservation plan” means a layout plan (or plans) which categorises all the land included in the agreement, 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);

“croft” has the same meaning as in section 3(1) of the Crofters (Scotland) Act 1955(3);

“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;

“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;

“machair” means sandy plains formed when calcareous shell-sand has been blown over glacial deposits and peat;

“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;

“traditional share of the common machair” means that portion of the common machair which has been allocated over time to individual crofters or farmers for cropping purposes by the common grazings committee;

“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 in the Western Isles known as the Machair of the Uists and Benbecula, Barra and Vatersay and which

(2) 1955 c. 21; section 27(7) was amended by the Crofting Reform (Scotland) Act 1976 (c. 21), section 16(5).

(3) Section 3(1) was amended by the Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9.

is shown delineated red and coloured pink on the map marked “Environmentally Sensitive Area—Machair of the Uists and Benbecula, Barra and Vatersay” dated 9th December 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.—(1) An agreement with a crofter or farmer regarding his croft or farm land, apportioned land and his traditional share of the common machair shall include the requirements specified in Part I of the Schedule to this Order.

(2) An agreement with a common grazings committee regarding land in the common machair shall include the requirements specified in Part II of the Schedule to this Order.

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 crofter, farmer or common grazings committee of the requirements referred to in article 4, the Secretary of State may give the crofter, farmer or common grazings committee notice in writing terminating the agreement forthwith and may recover from the crofter, farmer or common grazings committee 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(4) or any statutory modification or re-enactment thereof 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 with any crofter or farmer regarding his croft or farm land, his apportioned land and his traditional share of the common machair shall be at the rate of £15 per annum for each hectare of land to which the agreement relates, or at the rate of £1,000 per annum for any one crofter or farmer, whichever is the lower.

(2) Payments to a crofter or farmer shall be at the rate of not less than £150 per annum.

7.—(1) Subject to paragraph (2) below, payments made by the Secretary of State under an agreement with a common grazings committee regarding the common machair shall be at the rate of £15 per annum for each hectare of land to which the agreement relates, or at the rate of £1,000 per annum for any one common grazings committee, whichever is the lower.

(2) Payments to a common grazings committee shall be at the rate of not less than £150 per annum.

8. Where an agreement with a crofter or farmer regarding his croft or farm land, his apportioned land or traditional share of the common machair identifies in the conservation plan expenditure required to undertake additional agricultural operations as specified in paragraph 7 of Part I of the Schedule to this Order, the Secretary of State shall make additional payments according to the

(4) 1894 c. 13 (57 & 58 Vict.).

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agricultural 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 £2,000 per annum per crofter or farmer.

9. Where an agreement with a common grazings committee identifies in the conservation plan expenditure required to undertake additional agricultural operations as specified in paragraph 7 of Part II of the Schedule to this Order, the Secretary of State shall make additional payments according to the agricultural 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 £12,000 per annum for each common grazings committee.

Revocation

10. The Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Watersay) Designation Order 1988(5) 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
9th December 1993

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

We consent,

13th December 1993

Timothy Kirkhope
Irvine Patnick
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE

Article 4(1)

PART I

REQUIREMENTS TO BE INCLUDED IN AN AGREEMENT WITH A CROFTER OR FARMER REGARDING HIS CROFT OR FARM LAND HIS APPORTIONED LAND AND HIS TRADITIONAL SHARE OF THE COMMON MACHAIR

1. The crofter or farmer shall not apply herbicides or pesticides except 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:

Provided that 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.

2. The crofter or farmer shall undertake to croft or 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.

3. The crofter or farmer shall avoid damaging rough grazings, unimproved pasture, dunes, reverted improved land, wetlands and water margins by poaching, feeding practices, overgrazing, ploughing, cultivating, levelling, re-seeding, applying fertilisers, draining or undertaking other agricultural improvements including fencing unless prior approval has been given by the Secretary of State.

4. The crofter or 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.

5. The crofter or farmer shall obtain prior written approval from the Secretary of State before commencing the construction or significant re-alignment or improvement of vehicular tracks and hard standings for feeding areas.

6. The crofter or farmer shall conserve the amenity value of the landscape by screening or removing unsightly waste tips and dumps and by the removal of abandoned vehicles, scrap metal, torn silage bags and other rubbish.

7. The crofter or farmer shall prepare and agree with the Secretary of State a comprehensive conservation plan for the land on his croft or farm, including the traditional share of the common machair and any apportioned land, implement the terms of the plan and keep the operation of the plan under review. Each conservation plan will cover a 5 year period of the Scheme and shall—

- (a) identify land and conservation features relevant to the requirements of paragraphs 1 to 6 above;
- (b) identify all machair associated with the croft or farm, for which the crofter or farmer shall agree to—
 - (i) identify the ploughable area of such machair and ensure at least 15% of this area is in arable crop (or lying fallow after such recent cropping);
 - (ii) if available, apply to the cropped area of the machair at least one dressing per annum of seaweed, at the minimum rate of 40 tonnes per hectare, or one dressing per annum of dung at the minimum rate of 25 tonnes per hectare;
 - (iii) if the cropped area is to be undersown or sown away to pasture, use a grass seed mix approved in writing by the Secretary of State;

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- (iv) not to roll or harrow any area of machair used for hay or grass silage production after *1st May*, (or any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage);
 - (v) not cut hay, grass and arable silage crops before *31st July*, (or any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage);
 - (vi) cut all hay, grass and arable silage in a method that causes minimal damage to young birds.
- (c) identify all cropped or mown areas of non-machair ground associated with the croft or farm on which the crofter or farmer shall agree to—
- (i) not cut hay, grass or arable silage before *31st July*, (or any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage);
 - (ii) cut all hay, grass or arable silage in a method that causes minimal damage to young birds;
 - (iii) not roll or harrow grassland after *1st May*, or arable land after *15th May*, (or any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage).
- (d) prepare a grazing plan and other measures necessary to conserve, enhance or extend particular areas of wetlands and water margins;
- (e) prepare a grazing plan and other measures necessary to conserve, enhance or extend particular areas of herb rich grassland;
- (f) if the crofter or farmer so wishes, measures to improve the condition of features or areas of historic or archaeological interest;
- (g) if the crofter or farmer so wishes, any dune grass planting or other anti-erosion measures.
- Article 4(2)

PART II

REQUIREMENTS TO BE INCLUDED IN AN AGREEMENT WITH A COMMON GRAZINGS COMMITTEE REGARDING LAND IN THE COMMON MACHAIR

1. The common grazings committee shall undertake to croft or 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.

2. The common grazings committee 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.

3. The common grazings committee shall obtain prior written approval from the Secretary of State before commencing the construction or significant re-alignment or improvement of vehicular tracks.

4. The common grazings committee shall avoid damaging rough grazings, unimproved pasture, dunes, reverted improved land, wetlands and water margins by poaching, feeding practices, overgrazing, ploughing, cultivating, levelling, re-seeding, applying fertiliser, draining or undertaking other agricultural improvements including fencing unless prior approval has been given by the Secretary of State.

5. The common grazings committee shall conserve the amenity value of the landscape by screening or removing unsightly waste tips and dumps and by the removal of abandoned vehicles, scrap metal, torn silage bags and other rubbish.

6. The common grazings committee shall not remove or cause the removal of sand and shingle from dunes or beaches without the prior written approval of the Secretary of State.

7. The common grazings committee shall prepare and agree with the Secretary of State a comprehensive conservation plan for the common machair in the township, implement the terms of the plan and keep the operation of the plan under review. Each 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 6 above;
- (b) if appropriate to the grazings committee, contain details of the following farming operations:—
 - (i) dune grass planting or other anti-erosion measures necessary to protect the machair;
 - (ii) a programme of periodic maintenance of the existing watercourses;
 - (iii) any measures necessary to conserve, enhance or extend particular wetlands and water margins;
 - (iv) if the grazings committee so wishes, measures to improve the condition of features or areas of historic or archaeological interest.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates as an Environmentally Sensitive Area areas of land forming parts of the Uists, Benbecula, Barra and Vatersay in the Western Isles (article 3). Those areas are designated for the purposes 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 areas of the Uists, Benbecula, Barra and Vatersay which are designated can be inspected during normal office hours at the offices of the Scottish Office Agriculture and Fisheries Department, Pentland House, Robb's Loan, Edinburgh.

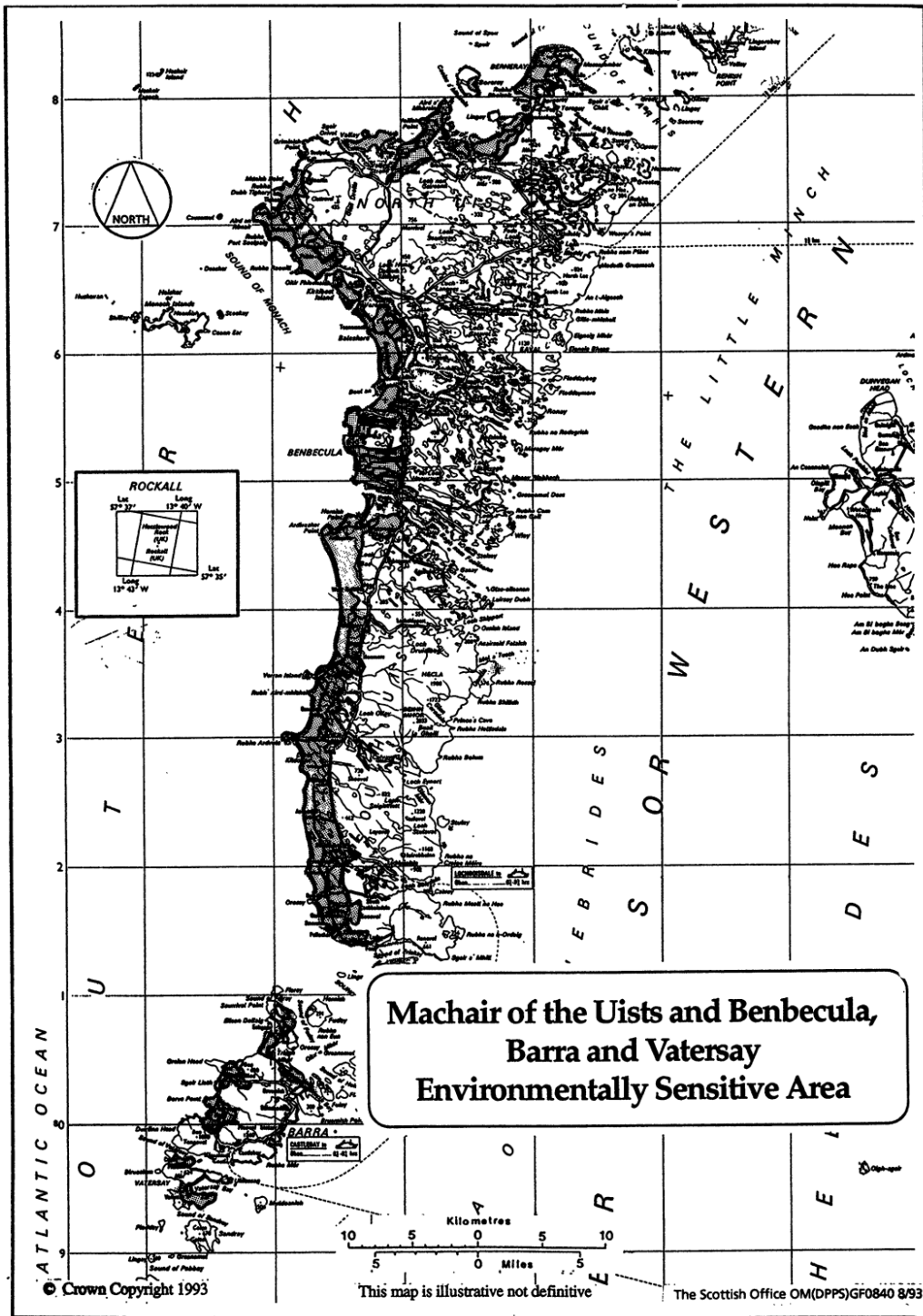
The Secretary of State may enter into a management agreement with any person having an interest in agricultural land in a designated area and the Order specifies the requirements as to agricultural practices, methods and operations which must be included in such an agreement (article 4(1) and (2) and 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 prescribed according to the nature of the land covered by the agreement and whether any additional agricultural operations require to be carried out (articles 6, 7, 8 and 9).

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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 at the above address.



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