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STATUTORY INSTRUMENTS

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**1993 No. 3150 (S.299)**

**AGRICULTURE**

**The Environmentally Sensitive Areas  
(Shetland Islands) 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<sup>(1)</sup>, 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 (Shetland Islands) Designation Order 1993 and shall come into force on 13th January 1994.

**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;

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

“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;

“heather moorland” means areas of land in which heather (*calluna vulgaris*) or 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 unimproved 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;

“inbye land” means that part of a croft or farm not comprising the hill and rough grazings, the bulk of which is used for arable and grassland production;

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

“muirburn” has the same meaning as in section 39(1)(f) of the Hill Farming Act 1946(4);

“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;

“planticrubs” means small enclosures formed by drystane dykes used for cultivation of Shetland cabbage;

“regeneration” means the perpetuation of vegetation through self-seeding or vegetation growth;

“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;

“stone crus” means small enclosures formed by drystane 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;

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(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.

(4) 1946 c. 73.

“upland vegetation” means vegetation types other than heather moorland which occur within the rough grazings;

“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 known as the Shetland Islands, which is shown delineated red and coloured pink on the map marked “Environmentally Sensitive Area–Shetland Islands” 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 farmland and apportioned land shall include the requirements specified in Part I of the Schedule to this Order as to agricultural practices, methods and operations and the installation and use of equipment.

(2) An agreement with a common grazings committee regarding land on the common grazings shall include the requirements specified in Part II of 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 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(5) 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 farmland and apportioned land 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.

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7.—(1) Subject to paragraph (2) below, payments made by the Secretary of State under an agreement with a common grazings committee 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 farmland and apportioned land identifies in the conservation plan, expenditure required to undertake additional agricultural operations as specified in paragraph 12(b) of Part I 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 £3,000 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 12(b) 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 per common grazings committee.

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

### PART I

#### REQUIREMENTS TO BE INCLUDED IN AN AGREEMENT WITH A CROFTER OR FARMER REGARDING HIS CROFT OR FARMLAND AND APPORTIONED LAND

1. The crofter or farmer shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, trees and shrubs by ploughing, new drainage or modifying existing drains, mechanical peat cutting, levelling, re-seeding or cultivating or by clearing trees and shrubs.

2. The crofter or farmer shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, trees and shrubs by poaching, feeding practices or overgrazing.

3. The crofter or 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, trees and shrubs, except that—

(a) herbicides may be applied to control bracken (*pteridium aquilinum*), 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—

(i) any herbicides used must be applied by weed wiper, spot treatment, hand spraying or, with the prior written approval of the Secretary of State, by other methods;

(ii) in the case of bracken, chemical control shall only be by means of asulam or other chemicals approved in writing by the Secretary of State;

(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 crofter or farmer shall ensure that if muirburn is being carried out it must be in accordance with the standards set out in the Scottish Natural Heritage leaflet entitled “A Muirburn Code” and published in 1993.

5. The crofter or 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 crofter or farmer shall not carry out any fencing of rough grazings without the prior written approval of the Secretary of State.

7. The crofter or farmer shall not level, remove or cause to remove sand or shingle from dunes or beaches without the prior written approval of the Secretary of State.

8. The crofter or farmer shall not remove any dykes unless authorised to do so in writing, by the Secretary of State, and shall maintain stockproof dykes in a stockproof condition.

9. 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.

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**10.** The crofter or 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.

**11.** 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.

**12.** 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 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 in paragraphs 1 to 11 above;
- (b) if appropriate to the croft or farm, contain details of the following farming operations:—
  - (i) a grazing plan and other measures necessary to conserve or enhance areas of trees or shrubs and, if the crofter or farmer so wishes, limited planting of mixed species of trees;
  - (ii) a grazing plan and other measures necessary to conserve, enhance or extend areas of wetlands and water margins;
  - (iii) a grazing plan and other measures necessary to conserve, enhance or extend areas of herb rich unimproved grassland;
  - (iv) if the crofter or farmer so wishes, a grazing plan and other measures necessary for the regeneration and subsequent retention of heather, other moorland vegetation and heath on specified areas of rough grazing;
  - (v) if the crofter or farmer so wishes, measures to restore dykes, stone cruss and planticrubs to standards consistent with conservation interests;
  - (vi) if the crofter or farmer so wishes, measures to improve the condition of features or areas of historic or archaeological interest;
  - (vii) if the crofter or farmer so wishes, the introduction or continuation of arable cropping in a manner which will conserve or enhance the environmental diversity of a maximum of 4 hectares of inbye land by—
    - (a) restricting cultivations such as ploughing, harrowing and rolling to the period between *28th February* and *31st May* or any date specified by the Secretary of State following consultation with Scottish Natural Heritage, except for root crops, where nests must be located and avoided during operations;
    - (b) not applying herbicides or pesticides on headlands of arable fields at least 6 metres wide;
  - (viii) if the crofter or farmer so wishes, the continuation or introduction of a system of conserving grass for winter keep which enhances the conservation value of mown fields by—
    - (a) removing, grazing by *1st June*, or any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage;
    - (b) not rolling or harrowing the land after *31st May*, or if required after any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage;
    - (c) cutting after *31st July*, or if required after any date which may be specified by the Secretary of State following consultation with Scottish Natural Heritage;

(d) cutting in a method that causes minimal damage to young birds.

## PART II

### REQUIREMENTS TO BE INCLUDED IN AN AGREEMENT WITH A COMMON GRAZINGS COMMITTEE AS REGARDS LAND WHICH IS THE SUBJECT OF AN AGREEMENT

1. The common grazings committee shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, trees and shrubs by ploughing, new drainage or modifying existing drains, mechanical peat cutting, levelling, re-seeding or cultivating or by clearing trees and shrubs.

2. The common grazings committee shall avoid damaging rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, trees and shrubs by poaching, feeding practices or overgrazing.

3. The common grazings committee shall not apply herbicides, pesticides, lime or fertiliser (including farmyard manure and slurry) to rough grazings, unimproved pasture, reverted improved land, wetlands, water margins, trees and shrubs, except that—

(a) herbicides may be applied to control bracken (*pteridium aquilinum*), 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—

(i) any herbicides used must be applied by weed wiper, spot treatment, hand spraying or, with the prior written approval of the Secretary of State, by other methods;

(ii) in the case of bracken, chemical control shall only be by means of asulam or other chemicals approved in writing by the Secretary of State;

(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 common grazings committee shall ensure that if muirburn is being carried out it must be in accordance with the standards set out in the Scottish Natural Heritage leaflet entitled “A Muirburn Code” and published in 1993.

5. The common grazings committee 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 common grazings committee shall not carry out any fencing of rough grazings without the prior written approval of the Secretary of State.

7. The common grazings committee shall not level, remove or cause to remove sand or shingle from dunes or beaches without the prior written approval of the Secretary of State.

8. The common grazings committee shall not remove any dykes unless authorised to do so in writing, by the Secretary of State, and shall maintain stockproof dykes in a stockproof condition.

9. 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.

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10. The common grazings committee 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.

11. 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.

12. The common grazings committee shall prepare and agree with the Secretary of State a comprehensive conservation plan for its 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 in paragraphs 1 to 11 above;
- (b) if appropriate to the common grazings, contain details of the following farming operations:—
  - (i) a grazing plan and other measures necessary to conserve identified areas of heather in their existing condition, to regenerate suppressed or eroded areas of heather, or to maintain and enhance other areas of upland vegetation;
  - (ii) a grazing plan and other measures necessary to conserve or enhance areas of trees or shrubs;
  - (iii) if the common grazings committee so wishes, measures to restore dykes and stone crus to standards consistent with conservation interests;
  - (iv) if the common grazings committee so wishes, measures to improve the condition of features or areas of historic or archaeological interest.

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## EXPLANATORY NOTE

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

This Order designates as an Environmentally Sensitive Area that area of land known as the Shetland Islands (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(1), (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)).



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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).

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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