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STATUTORY INSTRUMENTS

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**1996 No. 3077**

**AGRICULTURE**

**The Environmentally Sensitive Areas (Wales)  
Designation Orders (Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>11th December 1996</i>
<i>Laid before Parliament</i>		<i>11th December 1996</i>
<i>Coming into force</i>	- -	<i>1st January 1997</i>

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on him by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations.

**Title, commencement and interpretation**

1.—(1) These Regulations may be cited as the Environmentally Sensitive Areas (Wales) Designation Orders (Amendment) Regulations 1996 and shall come into force on 1st January 1997.

(2) In these Regulations, “the principal Orders” means the statutory instruments set out in the Schedule to these Regulations.

**Amendment of the principal Orders**

2.—(1) The principal Orders shall be amended in accordance with the following paragraphs of this regulation.

(2) In article 2(1) (interpretation) of each of the principal Orders, each of the following definitions shall be inserted at its alphabetically appropriate place—

- (a) ““agri-environment scheme” means an arrangement which is—
  - (a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument relates; and
  - (b) approved by the Commission of the European Communities under Article 7(3) of the Council Regulation as part of a zonal programme drawn up pursuant to Article 3 of the Council Regulation;”;

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(1) S.I.1972/1811.  
(2) 1972 c. 68.

- (b) ““application” means, in relation to a farmer, the application to enter into an agreement submitted to the Secretary of State that results in that farmer entering into an agreement with the Secretary of State;”;
  - (c) ““the Commission Regulation” means Commission Regulation (EC) No. 746/96(3) laying down detailed rules for the application of the Council Regulation;”;
  - (d) ““the Council Regulation” means Council Regulation (EEC) No. 2078/92(4) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside as last amended by Commission Regulation (EC) No. 2772/95(5) as rectified by Commission Regulation (EC) No. 1962/96(6);”.
- (3) In article 5 of each of the principal Orders—
- (a) for the phrase “An agreement shall include provisions” there shall be substituted the following—
    - “(1) Subject to paragraph (2) below, an agreement shall include provisions”; and
  - (b) at the end of the article there shall be added the following paragraph—
    - “(2) Nothing in paragraph (1) above requires an agreement to include remedies for the Secretary of State which he has by virtue of articles 5A, 5B and 5C below or by virtue of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declaration);”;
- (4) After article 5 of each of the principal Orders there shall be inserted the following articles—

**“Breach of requirements or provisions: supplementary**

**5A.**—(1) Subject to the provisions of Article 12 of the Commission Regulation (force majeure) and Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), and without prejudice to any rights the Secretary of State may have under an agreement, the Secretary of State may, where the farmer breaches any of the provisions of the agreement he has entered or any other requirement that applies to the making of any payment under this Order—

- (a) withhold the whole or any part of the sums payable to the farmer,
- (b) recover the whole or any part of the sums already paid to him, and
- (c) in so far as is consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings), require him to pay to the Secretary of State a sum equal to no more than 10% of the sums paid or payable to the farmer.

(2) Where the Secretary of State takes any step specified in paragraph (1) above, he may also terminate the agreement by notice in writing to the farmer.

(3) Where under paragraph (2) above the Secretary of State treats the agreement as terminated, he may also, insofar as is consequent upon Article 20(2) of the Commission Regulation, by notice in writing to the farmer prohibit him from providing a new undertaking or entering a new agreement under an agri-environment scheme for such period (not exceeding two years) from the date of that termination as is specified in the notice.

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(3) OJ No. L102, 25.4.96, p.19.

(4) OJ No. L215, 30.7.92, p.85.

(5) OJ No. L288, 1.12.95, p.35.

(6) OJ No. L259, 12.10.96, p.7.

### **Recovery of Interest**

**5B.**—(1) Where a payment is made under an agreement by the Secretary of State and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) For the purposes of this article, LIBOR means the sterling three month London interbank offered rate in force during the period specified in Article 20(1) of the Commission Regulation.

(3) In any proceedings relating to this article, a certificate of the Secretary of State stating the LIBOR applicable during a period specified in the certificate shall also be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Secretary of State of that rate.

### **Recovery of payments**

**5C.** In any case, where an amount falls to be paid to the Secretary of State by virtue of (or by virtue of action taken under) this Order or the Commission Regulation insofar as it relates to the environmentally sensitive area designated by this Order, the amount so falling to be paid shall be recoverable as a debt.”.

(5) After the last paragraph of article 6 of each of the principal Orders there shall be added the following paragraph—

“(8) Any obligation of the Secretary of State in the foregoing provisions of this article to make a payment under an agreement shall be subject to the provisions of Article 20(3) of the Commission Regulation (which requires a person covered by that provision who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation) and, in respect of an application made on or after 1st January 1997, of Article 10 of the Commission Regulation (which restricts duplication of aid payments)”.

Signed by authority of the Secretary of State for Wales

11th December 1996

*Jonathan Evans*  
Parliamentary Under Secretary of State, Welsh  
Office

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## SCHEDULE

Article 1(2)

## LIST OF PRINCIPAL ORDERS

- The Environmentally Sensitive Areas (Cambrian Mountains) Designation Order 1986(7)  
 The Environmentally Sensitive Areas (Cambrian Mountains—Extension) Designation Order 1987(8)  
 The Environmentally Sensitive Areas (Lleyn Peninsula) Designation Order 1987(9)  
 The Environmentally Sensitive Areas (Ynys Mon) Designation Order 1993(10)  
 The Environmentally Sensitive Areas (Radnor) Designation Order 1993(11)  
 The Environmentally Sensitive Areas (Clwydian Range) Designation Order 1994(12)  
 The Environmentally Sensitive Areas (Preseli) Designation Order 1994(13)

## EXPLANATORY NOTE

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

These Regulations amend the environmentally sensitive areas designation orders made under section 18 of the Agriculture Act 1986 designating areas in Wales as environmentally sensitive areas, which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7 of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p. 85) (“the Agri-environment Regulation”) on agricultural production methods compatible with the requirements of protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p. 19) (“the Commission Regulation”) laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 10 (which prevents duplication of aid under Community schemes in respect of an undertaking), Article 12 (force majeure) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

**The Regulations—**

- (a) clarify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10 and Article 20(3) of the Commission Regulation.
- (b) make provision to enable the Secretary of State to recover grant and impose penalties in accordance with Articles 12 and 20 of the Commission Regulation, and
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

(7) S.I. 1986/2257, amended by S.I. 1988/173, 1992/1359, 1992/2342 and 1995/243.

(8) S.I. 1987/2026, amended by S.I. 1988/173, 1994/240 and 1995/242.

(9) S.I. 1987/2027, amended by S.I. 1988/173, 1994/241 and 1995/242.

(10) S.I. 1993/1210, amended by S.I. 1993/2422 and 1995/242.

(11) S.I. 1993/1211, amended by S.I. 1995/242.

(12) S.I. 1994/238, amended by S.I. 1995/242.

(13) S.I. 1994/239, amended by S.I. 1995/242.

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These Regulations form part of a package submitted to the Commission under Article 23 of the Commission Regulation.

No Compliance Cost Assessment in relation to the Regulations has been prepared.