
STATUTORY INSTRUMENTS

1996 No. 3104

AGRICULTURE

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

Made - - - - *10th December 1996*
Laid before Parliament *11th December 1996*
Coming into force - - *1st January 1997*

The Minister of Agriculture, Fisheries and Food, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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, and after consulting the Secretary of State for the Environment, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of the Environment Act 1995⁽³⁾, hereby makes the following Regulations:

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmentally Sensitive Areas (England) 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.

(3) In these Regulations any reference to the Schedule shall, unless the context requires otherwise, be construed as a reference to the Schedule to these Regulations.

Amendment of the principal Orders (other than in relation to stocking levels)

2.—(1) The principal Orders set out in Part I of the Schedule 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—

(1) S.I.1972/1811.
(2) 1972 c. 68.
(3) 1995 c. 25.

- (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;”;
 - (b) ““application” means, in relation to a farmer, the application to enter into an agreement submitted to the Minister that results in that farmer entering into an agreement with the Minister;”
 - (c) ““the Commission Regulation” means Commission Regulation (EC) No. 746/96(4) laying down detailed rules for the application of the Council Regulation;”;
 - (d) ““the Council Regulation” means Council Regulation (EEC) No. 2078/92(5) 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(6) as rectified by Commission Regulation (EC) No. 1962/96(7);”.
- (3) In article 5 of each of the principal Orders set out in Section A of Part I of the Schedule—
- (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 Minister 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 declarations).”.
- (4) In article 6 of each of the principal Orders set out in Section B of Part I of the Schedule—
- (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 Minister which he has by virtue of articles 6A, 6B and 6C 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 declarations).”.
- (5) After—
- (a) article 5 of each of the principal Orders set out in Section A of Part I of the Schedule, and
 - (b) article 6 of each of the principal Orders set out in Section B of Part I of the Schedule,
- there shall be inserted the following articles, the provisions of which denoted A, B and C shall be numbered 5A, 5B and 5C or 6A, 6B or 6C accordingly—

(4) OJ No. L102, 25.4.96, p. 19.
 (5) OJ No. L215, 30.7.92, p. 85.
 (6) OJ No. L288, 1.12.95, p. 35.
 (7) OJ No. L259, 12.10.96, p. 7.

“Breach of requirements or provisions: supplementary

A.—(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 Minister may have under an agreement, the Minister 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 Minister a sum equal to no more than 10% of the sums paid or payable to the farmer.

(2) Where the Minister 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 Minister treats the agreement as terminated, he may also, in so far 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.

Recovery of Interest

B.—(1) Where a payment is made under an agreement by the Minister 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 Minister stating the LIBOR applicable during a period specified in the certificate shall be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Minister of that rate.

Recovery of payments

C. In any case, where an amount falls to be paid to the Minister 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.”

(6) After the last paragraph of—

- (a) article 6 of each of the principal Orders set out in Section A of Part I of the Schedule, and
- (b) article 7 of each of the principal Orders set out in Section B of Part I of the Schedule,

there shall be added the following paragraph, numbered appropriately—

“Any obligation of the Minister 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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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).”.

Amendments relating to stocking levels

3. Each of the principal Orders set out in an entry in column 1 of Part II of the Schedule shall be amended by inserting in the appropriate place in the Schedule referred to in the corresponding entry in column 2 of Part II of the Schedule the following paragraph, numbered in accordance with the corresponding entry in column 3 of Part II of the Schedule—

“the farmer shall not exceed a stocking level of 1.4 livestock units per hectare.”.

Saving

4. Regulation 3 above shall not apply in relation to any agreement made under a principal Order with a farmer as a result of an application submitted by that farmer before 1st January 1997.

10th December 1996

Tim Boswell
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

SCHEDULE

Regulations 2 and 3

ORDERS AMENDED BY THESE REGULATIONS

Part I

Section A

- The Environmentally Sensitive Areas (West Penwith) Designation Order 1986**(8)**
- The Environmentally Sensitive Areas (South Downs) Designation Order 1992**(9)**
- The Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1992**(10)**
- The Environmentally Sensitive Areas (The Broads) Designation Order 1992**(11)**
- The Environmentally Sensitive Areas (Pennine Dales) Designation Order 1992**(12)**
- The Environmentally Sensitive Areas (Breckland) Designation Order 1993**(13)**
- The Environmentally Sensitive Areas (Clun) Designation Order 1993**(14)**
- The Environmentally Sensitive Areas (North Peak) Designation Order 1993**(15)**
- The Environmentally Sensitive Areas (Suffolk River Valleys) Designation Order 1993**(16)**
- The Environmentally Sensitive Areas (Test Valley) Designation Order 1993**(17)**
- The Environmentally Sensitive Areas (North Kent Marshes) Designation Order 1993**(18)**
- The Environmentally Sensitive Areas (Exmoor) Designation Order 1993**(19)**
- The Environmentally Sensitive Areas (Avon Valley) Designation Order 1993**(20)**
- The Environmentally Sensitive Areas (Lake District) Designation Order 1993**(21)**
- The Environmentally Sensitive Areas (South Wessex Downs) Designation Order 1993**(22)**
- The Environmentally Sensitive Areas (South West Peak) Designation Order 1993**(23)**

Section B

- The Environmentally Sensitive Areas (Blackdown Hills) Designation Order 1994**(24)**
- The Environmentally Sensitive Areas (Cotswold Hills) Designation Order 1994**(25)**
- The Environmentally Sensitive Areas (Dartmoor) Designation Order 1994**(26)**

-
- (8)** S.I. 1986/2251, amended by S.I. 1992/51, 1994/250, 1994/933, 1996/922.
 - (9)** S.I. 1992/52, amended by S.I. 1994/252, 1994/931, 1996/924.
 - (10)** S.I. 1992/53, amended by S.I. 1994/251, 1994/932, 1996/920.
 - (11)** S.I. 1992/54, amended by S.I. 1994/254, 1994/929, 1996/921.
 - (12)** S.I. 1992/55, amended by S.I. 1992/301, 1993/460, 1994/253, 1994/930, 1996/923.
 - (13)** S.I. 1993/455, amended by S.I. 1994/923, 1995/198.
 - (14)** S.I. 1993/456, amended by S.I. 1994/921, 1995/190.
 - (15)** S.I. 1993/457, amended by S.I. 1994/922, 1995/189.
 - (16)** S.I. 1993/458, amended by S.I. 1994/920, 1995/194.
 - (17)** S.I. 1993/459, amended by S.I. 1994/919, 1995/191.
 - (18)** S.I. 1993/82, amended by S.I. 1994/918, 1995/199.
 - (19)** S.I. 1993/83, amended by S.I. 1994/928, 1995/195, 1995/960.
 - (20)** S.I. 1993/84, amended by S.I. 1994/927, 1995/197.
 - (21)** S.I. 1993/85, amended by S.I. 1994/925, 1995/193.
 - (22)** S.I. 1993/86, amended by S.I. 1994/924, 1995/196.
 - (23)** S.I. 1993/87, amended by S.I. 1994/926, 1995/192.
 - (24)** S.I. 1994/707, amended by S.I. 1996/2106.
 - (25)** S.I. 1994/708, amended by S.I. 1995/200, 1996/2107.
 - (26)** S.I. 1994/710, amended by S.I. 1996/2110.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

The Environmentally Sensitive Areas (Essex Coast) Designation Order 1994(27)
 The Environmentally Sensitive Areas (Shropshire Hills) Designation Order 1994(28)
 The Environmentally Sensitive Areas (Upper Thames Tributaries) Designation Order 1994(29)

Part II

Column 1 <i>Order</i>	Column 2 <i>Schedule</i>	Column 3 <i>Paragraph</i>
The Environmentally Sensitive Areas (Broads) Designation Order 1992	4	1(3) of Option 1
The Environmentally Sensitive Areas (South Downs) Designation Order 1993	2	1(3) of Option 2
The Environmentally Sensitive Areas (Breckland) Designation Order 1993	2	(4)
The Environmentally Sensitive Areas (Clun) Designation Order 1993	5	1(5)
The Environmentally Sensitive Areas (Suffolk River Valleys) Designation Order 1993	4	(4)
The Environmentally Sensitive Areas (Test Valley) Designation Order 1993	2	(5)
The Environmentally Sensitive Areas (North Kent Marshes) Designation Order 1993	3	(5)
The Environmentally Sensitive Areas (Avon Valley) Designation Order 1993	3	(5)
The Environmentally Sensitive Areas (South Wessex Downs) Designation Order 1993	2	2(4)

(27) S.I. 1994/711, amended by S.I. 1996/2108.

(28) S.I. 1994/709, amended by S.I. 1996/2109.

(29) S.I. 1994/712, amended by S.I. 1996/2105.

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 England 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 the 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 3 (which sets a stocking restriction on conversion of arable land to pasture), 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 the 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 Minister to recover grant and impose penalties in accordance with Articles 12 and 20 of the Commission Regulation,
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation, and
- (d) impose stocking restrictions in those environmentally sensitive areas which provide for payments for conversion of arable land to pasture.

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 these Regulations has been prepared.