
STATUTORY INSTRUMENTS

1988 No. 494 (S.56)

AGRICULTURE

**The Environmentally Sensitive Areas
(Whitlaw and Eildon) Designation Order 1988**

<i>Made</i>	- - - -	<i>10th March 1988</i>
<i>Laid before Parliament</i>		<i>24th March 1988</i>
<i>Coming into force</i>	- -	<i>14th April 1988</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 historic 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 the Countryside Commission for Scotland and the Nature Conservancy Council 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 (Whitlaw and Eildon) Designation Order 1988 and shall come into force on 14th April 1988.

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;

“conservation plan” means a layout plan of the farm and an attached statement identifying relevant land and conservation features and setting out, as appropriate, details of how the requirements in the agreement will be implemented on the farm;

“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 has entered into an agreement with the Secretary of State;

“rough grazings” means heathland or moorland used for grazing purposes;

“unimproved pasture” means land used for grazing which has not been tilled for cropping or reseeded and which has not previously been treated with a significant amount of artificial or mineral fertiliser or lime;

“wetland” means any ground which is normally saturated with water.

(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 District of Borders Region known as Whitlaw and Eildon and which is shown delineated red and coloured pink on the map marked “Environmentally Sensitive Area– Whitlaw and Eildon” dated 2nd March 1988 and signed on behalf of the Secretary of State for Scotland and deposited at the offices of the Department of Agriculture and Fisheries for Scotland, Chesser House, Gorgie Road, 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.

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 £20 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 comprising no more than 12 hectares of land to which an agreement relates shall be at the rate of £240 per annum per farm business.

7. Where an agreement identifies expenditure required to undertake additional farming operations specified in paragraph 15(2) 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 either at a rate to be determined by the Secretary of State, up to a maximum of £100 per annum for each hectare of land to which the agreement relates, or at the rate of £3,000 per annum per individual farm business, whichever is the lower.

New St Andrew's House,
Edinburgh
2nd March 1988

Sanderson of Bowden
Minister of State, Scottish Office

We consent,

10th March 1988

Peter Lloyd
Michael Neubert
Two of the Lords Commissioners of Her
Majesty's Treasury

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

SCHEDULE

Article 4

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

1. The farmer shall not apply lime, fertiliser (including farmyard manure and slurry), pesticides or herbicides (except for the control of spear-thistle
(*cirsium vulgare*), creeping or field thistle
(*cirsium arvense*), curled dock
(*rumex crispus*), broadleaved dock
(*rumex obtusifolius*) or ragwort
(*senecio jacobaea*) by means of weed wiper, spot treatment or hand spraying) to rough grazings or other unimproved pasture.
2. The farmer shall manage the rough grazings and other unimproved pasture to avoid poaching and over-grazing.
3. The farmer shall not plough, level, re-seed or cultivate rough grazings or other unimproved pasture.
4. The farmer shall retain existing areas of heather and undertake such measures as may be necessary to regenerate the heather.
5. The farmer shall not drain any area of wetland and shall carry out the maintenance of existing open drains and watercourses in a manner appropriate to the interests of conservation.
6. The farmer shall ensure that no pollution due to the escape of silage effluent, sheep dip or other pollutant occurs.
7. The farmer shall not remove any hedges, dykes or walls unless prior approval in writing has been obtained from the Secretary of State, which approval will be granted only in exceptional circumstances.
8. The farmer shall maintain stockproof dykes and walls in a stockproof condition and maintain all hedges in the interests of conservation.
9. The farmer shall ensure in farming the land that he does not damage or destroy any feature of historic interest.
10. The farmer shall obtain prior approval in writing from the Secretary of State for any tree planting proposals not submitted to the Forestry Commission under the forestry grant schemes.
11. The farmer shall comply with the Forestry Commission's felling control procedures in respect of farm woodland and hedgerow trees.
12. The farmer shall obtain prior approval in writing from the Secretary of State before commencing the construction or significant re-alignment or improvement of vehicular tracks.
13. The farmer shall obtain written advice from the Secretary of State before commencing the construction of new farm buildings or the carrying out of major renewal work to existing buildings.
14. The farmer shall discuss the contents of any existing agriculture development or improvement plan (as approved under the terms of the Farm and Horticulture Development Regulations 1981((2)), the Agriculture and Horticulture Development Regulations 1980((3)) or the Agriculture

(2) S.I. 1981/1707, amended by S.I. 1983/507, 925 and 1762, 1984/620 and 1924, 1985/1266 and 1986/1295

(3) S.I. 1980/1298, amended by S.I. 1981/1708, 1983/508, 924 and 1763, 1984/618 and 1922, and 1985/1025

Improvement Regulations 1985((4)) with the Secretary of State before proceeding with any work included in that development or improvement plan.

15.—(1) The farmer shall prepare and agree with the Secretary of State a farm conservation plan for his land within the designated area. The conservation plan shall identify land and conservation features relevant to the requirements in paragraphs 1 to 14 above and shall contain details of the additional farming operations to be carried out as specified in sub-paragraph (2) below.

- (a) (2) (a) The restoration of dykes, walls, hedges and hedgerow trees to standards consistent with conservation interests;
- (b) the protection of areas of wetland or open water by—
 - (i) sowing out adjacent fields not in pasture to permanent grass;
 - (ii) not applying lime, fertiliser (except for establishment purposes in the first year of newly sown out grass) or herbicides (except for the control of spear-thistle (cirsium vulgare), creeping or field thistle (cirsium arvense), curled dock (rumex crispus), broadleaved dock (rumex obtusifolius) or ragwort (senecio jacobaea) by means of weed wiper, spot treatment or hand spraying) to adjacent fields;
 - (iii) fencing off areas of wetland and open water as necessary to avoid poaching and other damage;
- (c) if the farmer wishes on fields to be used for arable cropping either—
 - (i) the control of spraying of pesticides and herbicides on a border of at least 6 metres width; or
 - (ii) the creation of uncropped wildlife strips to allow the natural establishment of plants by—
 - (a) ceasing production on a strip of land at least 6 metres wide from all borders of the field;
 - (b) cultivating the ground to create a seed bed;
 - (c) not applying chemical or organic fertiliser, lime, pesticides or herbicides (except for the control of spear-thistle (cirsium vulgare), creeping or field thistle (cirsium arvense), curled dock (rumex crispus), broadleaved dock (rumex obtusifolius) or ragwort (senecio jacobaea) by means of weed wiper, spot treatment or hand spraying) or sowing out grass or other seed;
 - (d) ensuring that the strip is not materially damaged by the passage of machinery;
- (d) any additional fencing work that may be necessary to implement the requirements specified in paragraphs 4 and 9 above.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates as an environmentally sensitive area the area of land within Ettrick and Lauderdale District of Borders Region known as Whitlaw and Eildon (article 3). That area is designated for the purposes of conserving, protecting and enhancing the 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 of Whitlaw and Eildon can be inspected during normal office hours at the offices of the Department of Agriculture and Fisheries for Scotland, Chessier House, Gorgie Road, 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 may be determined by arbitration (article 5(b)).

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

- (a) at the rate of £20 per year per hectare of land, or
- (b) at the rate of £1,500 per year for each individual farm business, whichever is the lower (article 6(1)).

In the case of farm businesses of no more than 12 hectares, payments are to be at the rate of £240 per year for each farm business (article 6(2)). Where an agreement includes the additional farming operations set out in paragraph 15(2) of the Schedule, additional payments are to be made either—

- (a) at a rate to be determined by the Secretary of State, up to a maximum rate of £100 per year per hectare, or
- (b) at the rate of £3,000 per year for each individual farm business, whichever is the lower (article 7).