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STATUTORY INSTRUMENTS

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**1994 No. 238**

**AGRICULTURE**

**The Environmentally Sensitive Areas  
(Clwydian Range) Designation Order 1994**

<i>Made</i>	- - - -	<i>1st February 1994</i>
<i>Laid before Parliament</i>		<i>8th February 1994</i>
<i>Coming into force</i>	- -	<i>1st March 1994</i>

Whereas, as mentioned 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 and historic interest in that area;

And whereas, as mentioned in the said section 18(1), it appears to the Secretary of State that the maintenance and adoption of the agricultural methods specified in Schedule 1 to the following Order is likely to facilitate the aforementioned conservation, enhancement and protection;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 18(1) and (4) 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 Council for Wales<sup>(2)</sup> as to the inclusion of the area referred to in article 3 of the following Order and the features of that area for which conservation, enhancement and protection are desirable, hereby makes the following Order:—

**Title and commencement**

1. This Order may be cited as the Environmentally Sensitive Areas (Clwydian Range) Designation Order 1994 and shall come into force on 1st March 1994.

**Interpretation**

2.—(1) In this Order—

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<sup>(1)</sup> 1986 c. 49; the expression “the Minister” is defined in section 18(11).

<sup>(2)</sup> The provisions in section 18 of the Agriculture Act 1986 concerning Nature Conservancy Councils were amended by Part VII of, and paragraph 13 of Schedule 9 to, the Environmental Protection Act 1990 (c. 43).

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

“bank” means a bank made of stone or earth falling within or forming the boundary of a field;

“boulder” means a rock projecting partly or wholly above the surface of the land to a height of at least 0.1 metres and covering a minimum area above ground of 0.5 square metres;

“broadleaved woodland” means land used for broadleaved woodland where that use is ancillary to the farming of land for other agricultural purposes;

“buffer zone” means a strip of land, other than land which is enclosed unimproved grassland, enclosed partially improved grassland, hay meadow, semi-natural rough grazings or wetland, which borders a rock outcrop and which is at least 2 metres wide;

“conservation headland” means a strip of arable land comprising an area between a line running parallel to a field boundary at a distance of 2 metres from that boundary and another line running parallel to that boundary at a distance of at least 6 metres from that boundary and upon which, by the selective use of pesticides, beneficial insects and broadleaved weeds are allowed to survive;

“enclosed partially improved grassland” means enclosed grassland which has not been regularly ploughed, levelled or reseeded but which has been modified by the application of herbicides, inorganic or organic fertiliser or by intensive grazing or drainage;

“enclosed unimproved grassland” means enclosed grassland which has not been regularly ploughed, levelled, drained or reseeded, or treated with inorganic or organic fertiliser, lime, herbicides or pesticides;

“farmer” means a person who has an interest in agricultural land in the area designated by article 3 and who also has entered into an agreement with the Secretary of State;

“hay meadow” means a meadow cut in the traditional manner the vegetation of which includes a mixture of native grasses, sedges and wild flowers;

“heather” means vegetation consisting of *Calluna vulgaris*, *Erica tetralix*, *Erica cinerea* or *Vaccinium myrtillus*;

“livestock unit” means—

- (a) 1 bovine animal more than two years old, or
- (b) 1.66 bovine animals from six months old to two years old inclusive, or
- (c) 6.66 sheep;

“rock outcrop” means an area of land where a stratum of underlying rock is exposed above the surface of the ground and which covers an area above ground of not less than nine square metres;

“scrub” means vegetation consisting primarily of locally native shrubs usually less than five metres in height;

“semi-natural rough grazings” means land where the vegetation consists predominantly of bent (*Agrostis*), fescue (*Festuca*), bracken (*Pteridium aquilinum*), purple moor grass (*Molinia caerulea*), mat grass (*Nardus stricta*), heather (*Calluna vulgaris*, *Erica tetralix*, *Erica cinerea* or *Vaccinium myrtillus*), cotton grass (*Eriophorum*) or deer grass (*Trichophorum cespitosum*);

“traditional farm buildings” means buildings which are in current agricultural use, but excluding living accommodation, and which are built of materials traditional to the locality;

“wetland” means land with a water table at or just below the surface of the soil throughout the majority of the year and includes wet pasture, reed beds, fen bog and willow carr and, except insofar as such land is bordered by broadleaved woodland, enclosed unimproved grassland,

enclosed partially improved grassland, hay meadow or semi-natural rough grazings, also includes a strip of land at least 10 metres wide adjoining such land.

(2) Any reference in this Order to a numbered article or Schedule shall be construed as a reference to the article or Schedule bearing that number in this Order.

### **Designation of environmentally sensitive area**

3. There is hereby designated as an environmentally sensitive area the area of land in the Clwydian Range in the County of Clwyd which is shown coloured yellow on the maps contained in the volume of maps marked “volume of maps of the area of land in the County of Clwyd designated by the Environmentally Sensitive Areas (Clwydian Range) Designation Order 1994” dated 31st August 1993, signed by the Secretary of State for Wales and deposited at the offices of the Welsh Office Agriculture Department at Trawsgoed, Aberystwyth, Dyfed SY23 4HT.

### **Requirements and provisions of agreement**

4. An agreement shall include the requirements specified in Schedule 1 as to agricultural practices, methods and operations and the installation and use of equipment.

### **Breach of requirements or provisions**

5. An agreement shall include provisions 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 as a debt 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 arbitrator to be agreed between the parties or in default of agreement to be appointed by the President of the Royal Institution of Chartered Surveyors in accordance with the provisions of the Arbitration Act 1950(3) 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, the Secretary of State shall make payments under an agreement at the rate of £25 per annum for each hectare of land to which the agreement relates.

(2) Where the area of land to which an agreement relates exceeds 20 hectares the Secretary of State shall make payments under the agreement for such land insofar as it exceeds 20 hectares at the following rates—

- (a) £17 per annum for each hectare of land which exceeds 20 hectares but which is less than 51 hectares; and
- (b) £10 per annum for each hectare of land which exceeds 50 hectares.

(3) Where an agreement includes land of the types to which paragraph 2 of Schedule 1 relates the Secretary of State shall, in addition to any payments made under paragraphs (1) and (2) above, make payments under an agreement for such land at the following rates—

- (a) £20 per annum for each hectare of unenclosed semi-natural rough grazings which do not include heather;

- (b) £35 per annum for each hectare of enclosed semi-natural rough grazings which do not include heather, enclosed partially improved grassland or enclosed unimproved grassland;
- (c) £35 per annum for each hectare of semi-natural rough grazings which include heather;
- (d) £45 per annum for each hectare of wetland;
- (e) £35 per annum for each hectare of hay meadow; and
- (f) £60 per annum for each hectare of buffer zone.

(4) Where an agreement includes the additional provisions specified in Schedule 2 the Secretary of State shall, in addition to any payments made under paragraphs (1) to (3) above, make payments at the following rates—

- (a) £20 per annum for each hectare of wetland and which under the agreement is subject to the additional provisions specified in paragraph 1 of Schedule 2;
- (b) £90 per annum for each hectare of broadleaved woodland and which under the agreement is subject to the additional provision specified in paragraph 2 of Schedule 2;
- (c) £25 per annum for each hectare of hay meadow and which under the agreement is subject to the additional provisions specified in paragraph 3 of Schedule 2;
- (d) £20 per annum for each hectare of semi-natural rough grazings where heather forms at least 5 per cent but not more than 50 per cent of the vegetation cover and which under the agreement is subject to the additional provisions specified in paragraph 4 of Schedule 2;
- (e) £90 per annum for each hectare of arable land which is suitable for the creation of conservation headlands and which under the agreement is subject to the additional provisions specified in paragraph 5 of Schedule 2;
- (f) £50 per annum for each hectare of land which is suitable for reversion to semi-natural rough grazings and which under the agreement is subject to the additional provisions specified in paragraph 6 of Schedule 2;
- (g) £70 per annum for each hectare of land which is suitable for reversion to hay meadow and which under the agreement is subject to the additional provisions specified in paragraph 7 of Schedule 2; and
- (h) £80 per annum for each hectare of land which is suitable for reversion to wetland and which under the agreement is subject to the additional provisions specified in paragraph 8 of Schedule 2.

(5) Where an agreement includes the additional provisions specified in Schedule 3 the Secretary of State shall, in addition to any payments made under paragraphs (1) to (4) above, make payments at the following rates—

- (a) £5.50 per annum for each metre of a field boundary which is hedgerow per hectare; and
- (b) £17 per annum for each metre of a field boundary which is a bank or a stone wall per hectare,

subject to a maximum of 3 metres of field boundary per hectare, and a maximum number of hectares corresponding to the area of land subject to the provisions of Schedule 1.

(6) Subject to paragraph (7) below, where an agreement includes one or more of the conservation plan operations specified in Schedule 4, the Secretary of State shall also make payments, in respect of the aggregate of the operations so specified which are included in the agreement, at a rate not exceeding £120 per annum for each hectare of land to which the agreement relates.

(7) The payments under paragraph (6) above shall not exceed a maximum of £4,000 per agreement.

20th January 1994

*John Redwood*  
Secretary of State for Wales

We consent,

1st February 1994

*Tim Wood*  
*Irvine Patnick*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## SCHEDULE 1

Article 4

## REQUIREMENTS TO BE INCLUDED IN AGREEMENT

**As regards all land which is the subject of an agreement—**

1.—(1) the farmer shall maintain existing hedges, walls, fences and banks using traditional methods and materials;

(2) the farmer shall not remove any existing hedges, walls, fences (other than wire fences), banks or hedgerow trees;

(3) the farmer shall not construct new hedges, walls, fences or banks without the prior approval of the Secretary of State;

(4) the farmer shall not apply to any field boundary or to a strip of land at least two metres wide which is adjacent to such a boundary—

(a) lime or any other substance designed to reduce the acidity of the soil, or

(b) inorganic or organic fertiliser, fungicides or insecticides;

(5) the farmer shall not apply herbicides to any field boundary or to a strip of land at least two metres wide which is adjacent to such a boundary, except to control bracken (*Pteridium aquilinum*), nettles (*Urtica dioica*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), curled dock (*Rumex crispus*), broadleaved dock (*Rumex obtusifolius*), ragwort (*Senecio jacobaea*) and Japanese Knotweed (*Reynoutria Japonica*) and then only by spot treatment or weed wiper and in the case of bracken (*Pteridium aquilinum*) by overall spray treatment;

(6) the farmer shall not increase existing stocking levels of cattle and sheep without the prior written approval of the Secretary of State;

(7) the farmer shall conserve and maintain all existing lakes, ponds and streams;

(8) the farmer shall in farming the land ensure that he does not damage or destroy any features of archaeological or historic interest;

(9) the farmer shall not remove any scrub without the prior approval of the Secretary of State;

(10) the farmer shall not move any boulders or remove any rocks from rock outcrops;

(11) the farmer shall maintain any weatherproof traditional farm buildings for which he is responsible in a weatherproof condition using traditional materials or other materials the use of which has been approved by the Secretary of State;

(12) the farmer shall obtain from the Secretary of State written advice concerning siting, design and materials before constructing or altering buildings or roads or undertaking any other engineering or construction operations which do not require prior notification determination by the local planning authority under the Town and Country Planning General Development Order 1988(4), or planning permission;

(13) the farmer shall control pests in a lawful manner;

(14) the farmer shall retain any broadleaved trees for which he is responsible.

**As regards any land which is the subject of an agreement and which is enclosed unimproved grassland, enclosed partially improved grassland, hay meadow, semi-natural rough grazings, wetland or a buffer zone—**

2.—(1) the farmer shall not plough, level, reseed, cultivate or, except in the case of enclosed partially improved grassland or hay meadow, use a chain harrow or roller;

(4) S.I. 1988/1813. The relevant amending instrument is S.I. 1991/2805.

(2) the farmer shall not, in the case of enclosed partially improved grassland or hay meadow, use a chain harrow or roller between 15th April and 15th July in any year;

(3) the farmer shall not install any new drainage system nor substantially modify any existing drainage system;

(4) the farmer shall not apply lime or any other substance designed to reduce the acidity of the soil;

(5) subject to sub-paragraph (6) below, the farmer shall not apply any inorganic or organic fertiliser;

(6) the farmer shall, in the case of enclosed partially improved grassland or hay meadow, and subject to sub-paragraph (4) of paragraph 1 of this Schedule, apply not more than 12.5 tonnes of farmyard manure per hectare per year;

(7) the farmer shall not apply fungicides or insecticides;

(8) subject to sub-paragraph (9) below and to sub-paragraph (5) of paragraph 1 of this Schedule, the farmer shall not apply herbicides except to control nettles (*Urtica dioica*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), curled dock (*Rumex crispus*), broadleaved dock (*Rumex obtusifolius*), ragwort (*Senecio jacobaea*) and Japanese Knotweed (*Reynoutria Japonica*) and then only by spot treatment or weed wiper;

(9) subject to sub-paragraph (5) of paragraph 1 of this Schedule, the farmer shall control bracken (*Pteridium aquilinum*) by mechanical means or by means of asulam or other chemical approved by the Secretary of State and in accordance with a programme agreed in advance with the Secretary of State;

(10) the farmer shall burn heather, grass and scrub only in accordance with a programme agreed in advance with the Secretary of State;

(11) the farmer shall not graze the land with cattle or sheep at a stocking rate that causes overgrazing or poaching, but—

(a) as regards unenclosed semi-natural rough grazings which do not include heather, he shall not in any event graze with cattle or sheep at an average annual stocking rate exceeding 0.375 livestock units per hectare, and

(b) as regards unenclosed semi-natural rough grazings which include heather or enclosed partially improved grassland which include heather, he shall not in any event graze with cattle or sheep at an average annual stocking rate exceeding 0.22 livestock units per hectare;

(12) the farmer shall restrict supplementary feeding of livestock to areas agreed in advance with the Secretary of State.

## SCHEDULE 2

Article 6(4)

### ADDITIONAL PROVISIONS — I

#### **1 As regards any land which is the subject of an agreement and which is wetland—**

(1) the farmer shall, within six months of the commencement of the agreement, agree in writing with the Secretary of State—

(a) a programme of management of the wetland, and

(b) a timescale to implement that programme of management;

(2) the farmer shall, within fifteen months of the commencement of the agreement, commence work on the programme of management of the wetland agreed with the Secretary of State;

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(3) the farmer shall implement the programme of management of the wetland agreed with the Secretary of State in accordance with the timescale agreed with the Secretary of State;

(4) the farmer shall not undertake any maintenance work on existing drainage systems.

**2 As regards any land which is the subject of an agreement and which is broadleaved woodland the farmer shall exclude livestock.**

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**3 As regards any land which is the subject of an agreement and which is hay meadow—**

(1) the farmer shall not cut for hay or silage before 15th July in any year;

(2) the farmer shall take at least one cut for hay or silage after 14th July in any year and shall graze the aftermath of each cut;

(3) the farmer shall exclude livestock for at least seven weeks before the first cut for hay or silage in any year and shall in any event exclude livestock between 7th June and the first cut for hay or silage in any year.

**4 As regards any semi-natural rough grazings which are the subject of an agreement and where heather forms at least 5 per cent but not more than 50 per cent of the vegetation cover—**

(1) the farmer shall graze with cattle or sheep at an average annual stocking rate not exceeding 0.15 livestock units per hectare;

(2) the farmer shall, between 31st August in any year and 1st April in the following year, graze with cattle or sheep at an average annual stocking rate not exceeding 0.10 livestock units per hectare.

**5 As regards any arable land which is the subject of an agreement and which is suitable for the creation of conservation headlands—**

5

(1) the farmer shall not apply fungicides or insecticides, except between 31st August in any year and 1st January in the following year;

(2) the farmer shall apply herbicides to the land only as agreed in advance with the Secretary of State except that this requirement shall not apply when applying herbicides to that part of the land which comprises a strip of land one metre wide adjoining the cropped area outside the conservation headland on the side of that conservation headland nearest to the centre of the field in which that conservation headland is situated.

**6 As regards any land which is the subject of an agreement and which is suitable for reversion to semi-natural rough grazings, the farmer shall observe the requirements of paragraph 2 of Schedule 1, other than sub-paragraphs (2) and (6) of that paragraph, and paragraph 4 of this Schedule.**

6

**7 As regards any land which is the subject of an agreement and which is suitable for reversion to hay meadow, the farmer shall observe the requirements of paragraph 2 of Schedule 1 and paragraph 3 of this Schedule.**

7



**8 As regards any land which is the subject of an agreement and which is suitable for reversion to wetland, the farmer shall observe the requirements of paragraph 2 of Schedule 1, other than sub-paragraphs (2) and (6) of that paragraph, and paragraph 1 of this Schedule.**

8

### SCHEDULE 3

Article 6(5)

#### ADDITIONAL PROVISIONS — II

As regards any field boundaries which are hedgerows, banks or stone walls and which are the subject of an agreement, the farmer shall carry out a restoration programme agreed in advance in writing with the Secretary of State.

### SCHEDULE 4

Article 6(6) and (7)

#### CONSERVATION PLAN OPERATIONS

1. The restoration of ponds.
2. The creation and restoration of wildlife refuges alongside streams.
3. The restoration of heather.
4. The regeneration of heather by burning or flailing.
5. The re-creation of florally rich meadows.
6. The renovation of traditional farm buildings.
7. The control of bracken (*Pteridium aquilinum*).
8. The control of Japanese Knotweed (*Reynoutria Japonica*).
9. The control of Himalayan balsam (*Impatiens glandulifera*).
10. The provision of protective fencing for broadleaved woodland.

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#### EXPLANATORY NOTE

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

Section 18 of the Agriculture Act 1986 (“the 1986 Act”) gives the Secretary of State power to designate an area in Wales as an environmentally sensitive area where it appears to him particularly desirable to conserve, protect or enhance environmental features in that area by the maintenance or adoption of particular agricultural methods.

This Order, which complies with Council Regulation (EEC) 2078/92 (OJNo. L215, 30.7.92, p.85.) on agricultural production methods compatible with the requirements of the protection of the

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environment and the maintenance of the countryside, designates an area in the Clwydian Range in the County of Clwyd as an environmentally sensitive area (article 3). The designated area is defined by reference to maps which are available for inspection during normal office hours at the address of the Welsh Office Agriculture Department specified in article 3. Copies of the maps may also be inspected during normal office hours at the Divisional Office of the Welsh Office Agriculture Department at Penrallt, Caernarfon, Gwynedd LL55 1EP.

Section 18(3) of the 1986 Act enables the Secretary of State to enter into a management agreement with any person having an interest in agricultural land in a designated area if the Secretary of State considers that conservation of environmental features in that area may thereby be facilitated. The Order specifies requirements as to agricultural practices, methods and operations and the installation or use of equipment which must be included in such an agreement (article 4 and Schedule 1).

The Order also contains provisions for the termination of an agreement and for the recovery of sums paid under an agreement by the Secretary of State in the event of a breach of the specified requirements, and for the determination by arbitration of any question as to whether a breach of those requirements has occurred (article 5). The rates of payment to be made by the Secretary of State under an agreement are set out (article 6) including the rates applicable to an agreement which contains additional provisions designed to attract higher rates of payment. These additional provisions are set out in Schedules 2, 3 and 4.