
STATUTORY INSTRUMENTS

1994 No. 712

AGRICULTURE

The Environmentally Sensitive Areas (Upper Thames Tributaries) Designation Order 1994

<i>Made</i>	- - - -	<i>3rd March 1994</i>
<i>Laid before Parliament</i>		<i>16th March 1994</i>
<i>Coming into force</i>	- -	<i>6th April 1994</i>

Whereas, as mentioned in section 18(1) of the Agriculture Act 1986⁽¹⁾, it appears to the Minister of Agriculture, Fisheries and Food (“the Minister”) 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 mentioned in the said section 18(1), it appears to the Minister that the maintenance or adoption of the agricultural methods specified in Schedule 1 to the following Order is likely to facilitate the aforementioned conservaton, enhancement and protection;

Now, therefore, the Minister, in exercise of the powers conferred on her by section 18(1) and (4) of the said Act, and of all other powers enabling her in that behalf, with the consent of the Treasury and after consultation with the Secretary of State, the Countryside Commission and the Nature Conservancy Council for England⁽²⁾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 (Upper Thames Tributaries) Designation Order 1994 and shall come into force on 6th April 1994.

Interpretation

2.—(1) In this Order—

⁽¹⁾ 1986 c. 49. The expression “the Minister” is defined in section 18(11). Section 18(4) was amended by S.I. 1994/249.
⁽²⁾ The provisions in section 18 of the Agriculture Act 1986 concerning Nature Conservancy Councils were amended by Part VII of, and Schedule 9 to, the Environmental Protection Act 1990 (c. 43).

“access route” means a strip of land 10 metres wide which is the subject of an agreement including the requirements specified in Schedule 2 as to public access;

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

“conservation plan” means a plan for the carrying out of one or more of the operations specified in Schedule 6 which the farmer undertakes, as part of an agreement, to implement within a period of two years;

“extensive permanent grassland” means permanent grassland which is receiving no or only minimal inputs of fertiliser, lime, slag or pesticides;

“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 Minister;

“fen habitat” means an area of semi-natural vegetation which is waterlogged throughout the year;

“grassland” means land on which the vegetation consists primarily of grass species;

“livestock unit” means—

- (a) 1 bovine animal more than two years old;
- (b) 1.66 bovine animals from six months old to two years inclusive;
- (c) 6.66 sheep;
- (d) 1 horse more than six months old; or
- (e) 4.35 farmed deer;

“permanent grassland” means grassland which has not been ploughed or reseeded for at least five years;

“recognised dairy breed” means one of the following breeds, namely, Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry;

“wetland” means land which is subject to regular flooding or which is waterlogged for the greater part of the year.

(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 valleys of the Upper Thames and its tributaries in the Counties of Buckinghamshire, Gloucestershire, Northamptonshire, and Oxfordshire which is shown coloured yellow on the maps contained in the volume of maps marked “volume of maps of the Upper Thames Tributaries environmentally sensitive area” dated 3rd March 1994, signed and sealed by the Minister and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, 17 Smith Square, London SW1P 3JR.

Requirements included in an 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.

5. An agreement may also include the requirements as to public access specified in Schedule 2 to this Order.

Breach of requirements

6. An agreement shall include provisions that—
- (a) in the event of a breach by the farmer of the requirements referred to in article 4 which are included in the agreement, the Minister 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 Minister under the agreement or such part thereof as the Minister may specify;
 - (b) action arising under the 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 and 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

7.—(1) The Minister shall make payments under an agreement at the rate of £30 per annum for each hectare of permanent grassland to which the agreement relates and at the rate of £100 per annum for each hectare of extensive permanent grassland to which the agreement relates unless a higher rate is applicable in accordance with paragraph (3) below.

(2) Where an agreement includes the additional provisions specified in Schedule 2 the Minister shall make payments at the rate of £170 per annum for each hectare of access route.

(3) Where an agreement includes the additional provisions specified in Schedule 3 in relation to any wet grassland, the Minister shall make payments at the rate of £150 per annum for each hectare of that land.

(4) Where an agreement includes the additional provisions specified in either of the options in Schedule 4 in relation to any land the Minister shall make payments at the rate per annum for each hectare of that land shown in the following table—

	<i>per hectare of land per annum</i>
Schedule 4	
option 1	£260
option 2	£310

(5) Where an agreement includes the additional provisions specified in Schedule 5, the Minister shall make payments at the rate of £3 for each 10 metres of stockproof hedge per hectare, subject to a maximum of 50 metres of stockproof hedge per hectare and a maximum number of hectares corresponding to the area of land subject to the provisions of Schedule 1 which contains or is enclosed or partially enclosed by such hedges.

(6) Where an agreement includes a conservation plan, the Minister shall also make payments in respect of the aggregate of the operations included in the plan at a rate not exceeding £75 per annum for each hectare of land to which the agreement relates, subject to a maximum of £3,000 for each such plan.

(3) 1950 c. 27.

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In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 3rd March 1994.

L.S.

Gillian Shephard
Minister of Agriculture, Fisheries and Food

We consent,

Timothy Wod
Nicholas Baker
Two of the Lords Commissioners of Her
Majesty's Treasury

3rd March 1994

SCHEDULE 1

Articles 4 and 7(1)

REQUIREMENTS TO BE INCLUDED IN AGREEMENT

1. As regards all permanent grassland which is the subject of an agreement—

(1) the farmer shall maintain the land and shall not plough, level or reseed. The farmer shall not cultivate except by means of a chain harrow or roller;

(2) the farmer shall graze with livestock other than pigs or poultry but not so as to cause poaching, overgrazing or undergrazing. He shall not graze with horses except in conjunction with cattle or sheep;

(3) where the farmer cuts the grass for hay, he shall continue to do so and graze the aftermath with livestock;

(4) the farmer shall wilt and turn any grass cut for silage before removal and graze the aftermath with livestock;

(5) the farmer shall not increase existing application rates of organic or inorganic fertiliser. He shall not apply any organic fertiliser within 50 metres of a spring, well or borehole that supplies water for human consumption or within 10 metres of any watercourse;

(6) the farmer shall not apply any fungicides or insecticides;

(7) the farmer shall not apply any herbicides except to control stinging nettles, spear thistle, creeping or field thistle, curled dock, broadleaved dock or ragwort. Herbicides used for these purposes shall be applied by wick applicator or by spot treatment;

(8) the farmer shall dispose of sheep dip safely. He shall not spread sheep dip where it may affect areas of nature conservation value;

(9) the farmer shall not install any new land drainage system or modify any existing land drainage system so as to bring about improved drainage;

(10) the farmer shall maintain existing water levels and shall maintain watercourses and ditches (including margins and banks) for which he is responsible in rotation by mechanical means. He shall dry and spread spoil but shall not use it to infill depressions;

(11) the farmer shall retain and manage ponds, lakes, fen habitats, reeds and wetland;

(12) the farmer shall not remove any hedges or walls or any part thereof. He shall maintain stockproof hedges and walls in a stockproof condition using traditional materials. He shall not apply pesticides or fertiliser on land within 1 metre of any hedge or wall;

(13) the farmer shall retain and manage individual trees and groups of trees (including pollarded willows) for which he is responsible. He shall retain existing broadleaved woodland and shall not plant any additional trees or woodland without the Minister's prior written approval;

(14) within two years of the start of the agreement, the farmer shall obtain from a person approved by the Minister written advice on the management of woodland and scrub;

(15) the farmer shall not damage, destroy or remove any feature of archaeological or historic interest;

(16) the farmer shall obtain from a person approved by the Minister written advice on the agricultural management of known archaeological and historic features;

(17) the farmer shall maintain any weatherproof traditional farm buildings for which he is responsible in a weatherproof condition using traditional styles and materials;

(18) the farmer shall obtain from the Minister written advice on siting, design and materials before constructing buildings or roads or before carrying out any other engineering or construction

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works which do not require prior notification to determination by the local planning authority under the Town and Country Planning General Development Order 1988(4), or planning permission;

2. As regards all extensive permanent grassland which is the subject of the agreement—

(1) the farmer shall not use a chain harrow or roller from 1st April until 30th June inclusive in any year;

(2) the farmer shall not exceed a stocking level of 0.75 livestock units per hectare from 1st April until 31st May inclusive in any year;

(3) the farmer shall not top the grass or cut it for hay or silage before 1st July in any year;

(4) the farmer shall restrict supplementary feeding of livestock to areas agreed in writing in advance with the Minister;

(5) the farmer shall not apply any organic or inorganic fertiliser except farmyard manure. He shall not apply slurry, pig or poultry manure or sewage sludge. He shall not increase existing application rates of farmyard manure and in any event shall not apply more than 12.5 tonnes per hectare per year. He shall not apply farmyard manure from 1st April until 31st May inclusive in any year and outside this period shall apply it only in a single dressing;

(6) the farmer shall not apply lime, slag or any other substance designed to reduce the acidity of the soil.

SCHEDULE 2

Article 7(2)

REQUIREMENTS AS TO PUBLIC ACCESS

As regards any access route which is the subject of an agreement—

(1) the farmer shall make the access route available for public access at no charge;

(2) the farmer shall maintain free passage over the access route;

(3) the farmer shall not erect new fences on or adjacent to the access route without the prior written approval of the Minister;

(4) the farmer shall keep the access route and fields crossed by it free of litter and other refuse;

(5) the farmer shall exclude bulls from the access route and fields crossed by it, except for any bull which—

(a) does not exceed the age of 10 months, or

(b) which is not of a recognised dairy breed and is at large in any field or enclosure in which cows and heifers are also at large;

(6) the farmer shall provide and maintain adequate means of entry to the access route;

(7) the farmer shall affix and maintain appropriate signboards and waymarking;

(8) the farmer shall not permit any of the following activities on the access route or on fields crossed by it: camping, caravanning, lighting of fires, organised games or sports, riding of motor vehicles (except for those used for agricultural operations on the land), without the Minister's prior written approval;

(9) the farmer shall agree with the Minister in writing in advance whether the riding of horses or cycles shall be permitted on the access route, and shall not permit such activities other than to the extent so agreed;

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

(10) the farmer shall not close the access route to the public other than for a specified number of days, to be agreed with the Minister in writing and in advance. Where such a prior agreement is reached, the farmer may close the access route for the number of days so specified, provided that signs giving notice of the intended closure and the reasons for it are posted at each entry point to the access route at least two weeks in advance of the date of closure;

(11) the farmer shall agree with the Minister in writing in advance public liability insurance cover and shall maintain it for the duration of the agreement.

SCHEDULE 3

Article 7(3)

ADDITIONAL PROVISIONS—I (WET GRASSLAND)

As regards any wet grassland which is the subject of an agreement—

(1) the farmer shall maintain water levels in ditches and watercourses at not more than 30cm below mean field level from 1st April until 31st May inclusive in any year and shall ensure that at least 30cm of water is provided in the bottom of the ditch or watercourse throughout the year;

(2) the farmer shall not graze with livestock from 1st April until 15th May inclusive in any year;

(3) the farmer shall not apply any organic or inorganic fertiliser;

(4) within two years of the start of the agreement, the farmer shall agree in writing with the Minister a programme for the management of ditches and watercourses for which he is responsible.

SCHEDULE 4

Article 7(4)

ADDITIONAL PROVISIONS—II (REVERSION OF ARABLE LAND)

Option 1—Reversion of arable land to extensive permanent grassland

As regards any land which is the subject of an agreement, which is suitable for reversion from arable land to extensive permanent grassland and which on 31st December 1993 was in arable cropping or had been in ley management for less than 5 years as part of an arable rotation—

(1) the farmer shall cease arable and ley grassland production and shall establish a grassland sward within 7 months of the start of the agreement using seed from species approved by the Minister;

(2) during the 7 month period referred to in paragraph (1)

above, the farmer shall not apply—

(a) any organic or inorganic fertiliser;

(b) lime, slag or any other substance designed to reduce the acidity of the soil; or

(c) any fungicide, insecticide or herbicide

without obtaining the Minister's prior written approval;

(3) during each of the three years following grassland establishment, the farmer shall cut the grass, remove the cuttings and graze the aftermath;

(4) the farmer shall observe the requirements of sub-paragraphs (9)-(18) of Schedule 1 from the start of the agreement and, after the expiry of the 7 month period referred to in sub-paragraph (1) above, he shall in addition observe the other requirements of that Schedule.

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Option 2—Reversion of arable land to wet grassland

As regards any land which is the subject of an agreement, which is suitable for reversion from arable land to wet grassland and which on 31st December 1993 was in arable cropping or had been in ley management for less than 5 years as part of an arable rotation—

(1) the farmer shall cease arable and ley grassland production and shall establish a grassland sward within 7 months of the start of the agreement using seed from species approved by the Minister;

(2) during the 7 month period referred to in paragraph (1) above, the farmer shall not apply—

(a) any organic or inorganic fertiliser;

(b) lime, slag or any other substance designed to reduce the acidity of the soil; or

(c) any fungicide, insecticide or herbicide

without obtaining the Minister's prior written approval;

(3) during each of the three years following grassland establishment, the farmer shall cut the grass, remove the cuttings and graze the aftermath;

(4) the farmer shall observe the requirements of sub-paragraphs (9)-(18) of Schedule 1 from the start of the agreement, and after the expiry of the 7 month period referred to in sub-paragraph (1) above, he shall in addition observe the other requirements of that Schedule as well as the provisions of Schedule 3.

SCHEDULE 5

Article 7(5)

ADDITIONAL PROVISIONS—III (HEDGE MANAGEMENT)

As regards any stockproof hedges which are the subject of an agreement, the farmer shall carry out a programme agreed in writing in advance with the Minister for the management of such stockproof hedges by traditional means, including laying.

SCHEDULE 6

Article 7(6)

CONSERVATION PLAN OPERATIONS

1. The planting of hedges and the restoration of non-stockproof hedges.
2. The restoration of ponds.
3. The provision of water penning structures or other works designed to control water levels.
4. The provision of water supplies and fencing associated with the reintroduction of livestock for grazing.
5. The restoration of ditches, fen habitats and reedbeds.
6. The restoration of stone walls.
7. The restoration of traditional farm buildings.
8. Works to protect historical and archaeological features.
9. The reintroduction of pollarding management.

10. The provision and restoration of gates, stiles and footbridges where an agreement includes the requirements of Schedule 2 as to public access.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 18 of the Agriculture Act 1986 (“the 1986 Act”) gives the Minister of Agriculture, Fisheries and Food (“the Minister”) power to designate areas in England as environmentally sensitive areas where it appears to her particularly desirable to conserve, protect or enhance environmental features in those areas by the maintenance or adoption of particular agricultural methods.

This Order, which complies with Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p.85) on agricultural methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, designates an area in the valleys of the Upper Thames and its tributaries 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 offices of the Ministry of Agriculture, Fisheries and Food at Nobel House, 17 Smith Square, London SW1P 3JR.

Section 18(3) of the 1986 Act enables the Minister to enter into a management agreement with any person having an interest in agricultural land in a designated area by which that person agrees in consideration of payments to be made by the Minister to manage the land in accordance with the agreement. 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), as well as the requirements as to public access which may be included in an agreement (article 5 and Schedule 2). It also details the additional provisions which may be included in an agreement (Schedules 3, 4 and 5) and the conservation plan operations which may be carried out (Schedule 6).

The Order also contains provisions for recovery of sums paid under an agreement by the Minister in the event of a breach of the specified requirements, and for the determination by arbitration of any question as to whether such a breach has occurred (article 6). The rates of payment to be made by the Minister under an agreement are set out, including the rates applicable to an agreement which contains additional provisions designed to attract higher rates of payment (article 7).