
STATUTORY INSTRUMENTS

1997 No. 1440

AGRICULTURE

**The Environmentally Sensitive Areas
(The Broads) Designation Order 1997**

<i>Made</i>	- - - -	<i>5th June 1997</i>
<i>Laid before Parliament</i>		<i>10th June 1997</i>
<i>Coming into force</i>	- -	<i>1st July 1997</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 this 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 that section, it appears to the Minister that the maintenance or adoption of the agricultural methods specified in Schedule 1 to this Order is likely to facilitate the aforementioned conservation, enhancement and protection;

Now, therefore, the Minister, in exercise of the powers conferred on him by section 18(1) and (4)(2) 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 Secretary of State, the Countryside Commission, the Nature Conservancy Council for England⁽³⁾ and the Historic Buildings and Monuments Commission for England as called for by section 18(1) and (2) of the said Act and section 99 of the Environment Act 1995⁽⁴⁾, hereby makes the following Order:

Title and commencement

1. This Order may be cited as the Environmentally Sensitive Areas (The Broads) Designation Order 1997 and shall come into force on 1st July 1997.

Interpretation

2.—(1) In this Order—

(1) 1986 c. 49. The expression “the Minister” is defined in section 18(11).
(2) Section 18(4) was amended by S.I. 1994/249.
(3) 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).
(4) 1995 c. 25.

“access route” means a strip of land 10 metres wide which is the subject of an agreement including the requirements referred to in article 5(3);

“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” has the meaning given to it in article 5(5);

“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 Minister;

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

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

“strip”, except in the definition of “access route”, means a strip of land at least six metres wide located at the edge of a field and used for the production of arable crops and which adjoins an open drainage channel.

(2) Any reference in this Order to a numbered article or Schedule (with no corresponding reference to a specific instrument) is 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 Broads in the Counties of Norfolk and Suffolk which is shown coloured yellow on the maps contained in the volume of maps marked “Volume of maps of The Broads Environmentally Sensitive Area” dated 4th June 1997 signed by the Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, at Nobel House, 17 Smith Square, London SW1P 3JR.

Requirements and provisions of agreement

4.—(1) The requirements as to agricultural practices, methods and operations and the installation or use of equipment which must be included in agreements are those specified in Schedule 1.

(2) The provisions relating to additional matters in respect of which the Minister may make payments in accordance with article 5 are specified in Schedules 2, 3, 4, 5, 6, 7 and 8.

Rates of payment under agreement

5.—(1) The Minister may make payments under an agreement in consideration of the requirements included pursuant to article 4(1), up to the maximum rate per annum set out in Part I of Schedule 9 for each hectare of grassland to which the agreement relates.

(2) Where an agreement contains the additional provisions specified in one or more of—

- (a) Schedule 2,
- (b) Schedule 3,
- (c) Schedule 4,
- (d) Schedule 5, and
- (e) the options contained in Schedule 6,

the Minister may make payments in consideration of those provisions, up to the maximum rate per annum for each hectare of land which under the agreement is subject to those provisions, as set out opposite the reference to that Schedule, or, as the case may be, option, in Part II of Schedule 9.

(3) An agreement may include the requirements as to public access specified in Schedule 7 and, where it does so, the Minister may make payments in consideration of those requirements, up to the maximum rate per annum set out in Part III of Schedule 9 for each hectare of access route.

(4) Where an agreement includes a conservation plan, the Minister may make payments in consideration of the operations included in the plan, up to the maximum sum set out in Part IV of Schedule 9.

(5) For the purposes of paragraph (4) of this article, a conservation plan means a plan which the farmer undertakes or has undertaken as part of an agreement to implement within a period of two years, for the carrying out of one or more of the operations specified in Schedule 8.

(6) In this article and Schedule 9 any reference to a payment rate in relation to any unit of measurement includes a proportionate rate for a proportionate part of that unit.

Revocation, saving and amendment

6.—(1) The Environmentally Sensitive Areas (The Broads) Designation Order 1992⁽⁵⁾ is, in so far as it was made under section 18 of the Agriculture Act 1986, hereby revoked except that—

- (a) the saving set out in article 7 of that Order in respect of the provisions of the Environmentally Sensitive Areas (The Broads) Designation Order 1986⁽⁶⁾ shall continue to apply in respect of the agreements referred to in that article, and
- (b) the other provisions of that Order so made, as amended in accordance with Schedule 10, shall continue to apply to agreements made before the coming into force of this Order in relation to land within the area designated by that Order.

(2) The Environmentally Sensitive Areas (The Broads) Designation (Amendment) (No. 2) Order 1994⁽⁷⁾ and the Environmentally Sensitive Areas (The Broads) Designation (Amendment) Order 1996⁽⁸⁾ are hereby revoked, but not so as to affect the exceptions referred to in paragraph (1) of this article.

4th June 1997

Elliot Morley
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

We consent

5th June 1997

Bob Ainsworth
Jon Owen Jones
Two of the Lords Commissioners of Her Majesty's
Treasury

(5) S.I. 1992/54, amended by S.I. 1994/929, S.I. 1996/921, S.I. 1996/3104.

(6) S.I. 1986/2254, amended by S.I. 1988/175, and revoked subject to a saving by S.I. 1992/54.

(7) S.I. 1994/929, which itself revoked the first amendment to S.I. 1992/54.

(8) S.I. 1996/921.

SCHEDULE 1

Article 4(1)

REQUIREMENTS TO BE INCLUDED IN AGREEMENT

1. As regards any grassland which is subject to the agreement, requirements to the effect that—
 - (a) the farmer shall maintain the grassland and not plough, level or reseed it and shall not cultivate it except with a chain harrow or roller;
 - (b) the farmer shall graze it with livestock except pigs or poultry but not so as to cause poaching, overgrazing or undergrazing;
 - (c) the farmer shall take no more than one cut of hay or silage each year;
 - (d) where the farmer takes a cut of hay or silage in accordance with subparagraph (c) above, he shall graze the aftermath;
 - (e) the farmer shall not increase his existing application rates of inorganic fertiliser and shall not in any event apply more than 125 kilograms of nitrogen, 75 kilograms of phosphate and 75 kilograms of potash per hectare of the grassland per year;
 - (f) the farmer shall use no more than 94 kilograms of nitrogen per hectare of the grassland in any one application;
 - (g) the farmer shall not apply pig slurry or poultry manure to the grassland and shall not increase his existing application rates of organic manure to it;
 - (h) the farmer shall not apply farmyard manure to the grassland except manure which has been produced on his own farm and shall not apply more than 30 tonnes per hectare of the grassland in a year;
 - (i) the farmer shall not apply cattle slurry to the grassland except slurry which has been produced on his own farm and shall not apply more than 30 cubic metres of slurry containing 10 per cent or more of dry matter per hectare of the grassland per annum or such greater volume in cubic metres of slurry as the Minister regards as equivalent if the dry matter is less than 10 per cent;
 - (j) the farmer shall not apply fungicide or insecticides to the grassland;
 - (k) the farmer shall not apply herbicides to the grassland except to control nettles, spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort, shall control infestations of those weeds by cutting or by herbicides, and if using herbicides for that purpose shall apply them by weed wiper or by spot treatment.
2. As regards all land which is the subject of the agreement, requirements to the effect that—
 - (a) the farmer shall not mole-drain or install under-drainage, and shall not sub-soil or slit drain or otherwise modify substantially his existing drainage system;
 - (b) the farmer shall maintain existing dykes in rotation by mechanical means, shall slub out each ditch and dyke at least once every 8 years and not more than once every 5 years and shall dry and level the spoil after slubbing out;
 - (c) the farmer shall ensure that water is maintained at a suitable level for livestock to graze on grazing marshes and shall—
 - (i) ensure that there is at least 30 centimetres of water in the bottom of dykes between 31st October in any given year and the following 1st March, and
 - (ii) begin to increase dyke water levels to summer levels no later than 1st March in any given year;
 - (d) the farmer shall maintain hedges, ponds and reedbeds;
 - (e) the farmer shall not damage or destroy any feature of historic interest;

- (f) the farmer shall obtain written advice on siting and materials from the Minister before constructing buildings or roads or before undertaking any other engineering or construction operations which do not require prior determination as to the need for any approval by the local planning authority under Part 6 or 7 of Schedule 2 (permitted development) to the Town and Country Planning (General Permitted Development) Order 1995(9) or planning permission; and
- (g) the farmer shall obtain written advice on the management of any woodland or scrub and on any proposal to plant new woodland from a person approved by the Minister for the purpose of giving that advice.

SCHEDULE 2

Articles 4(2) and 5(2)(a)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 9, PART II, ITEM 1 RELATE

As regards any grassland which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall—
 - (i) ensure that water is maintained on the grazing marshes at not lower than 45 centimetres below marsh level between 31st March and 1st November in any given year;
 - (ii) provide a minimum of 60 centimetres of water in the bottom of dykes between 30th November in any given year and the following 1st March; and
 - (iii) shall begin to raise water levels to their summer maximum no later than 1st March in any given year;
- (b) the farmer shall not carry out any mechanical operations between 31st March and 16th July in any given year;
- (c) the farmer shall not graze the land with livestock between 31st December in any given year and the following 1st April;
- (d) the farmer shall not cut the grass for silage;
- (e) the farmer shall not cut the grass for hay before 16th July in any given year;
- (f) the farmer shall not—
 - (i) increase his existing application rates for fertiliser containing nitrogen and shall not in any event apply more than 44 kilograms of fertiliser containing nitrogen per hectare per year, or
 - (ii) apply phosphate or potash to the land.
- (g) the farmer shall not apply any organic manure to the land;
- (h) the farmer shall not apply lime, slag or any other substance designed to reduce the acidity of the soil to the land;
- (i) the farmer shall, within two years from the commencement of the agreement agree with the Minister a plan of dyke maintenance and shall implement that plan;
- (j) the farmer shall maintain existing foot drains and grips but shall not without the prior approval of the Minister dig new foot drains or grips.

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SCHEDULE 3

Articles 4(2) and 5(2)(b)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 9, PART II, ITEM 2 RELATE

As regards any grassland which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall—
 - (i) ensure that water is maintained at marsh level between 1st January and 30th April in any given year so as to create shallow pools;
 - (ii) maintain dyke levels at no lower than 45 centimetres below marsh level between 1st June and 31st October in any given year, and
 - (iii) begin to raise the water level to winter level no later than 1st November in any given year;
- (b) the farmer shall not apply any fertiliser to the land;
- (c) the farmer shall not graze the land with livestock between 1st November in any given year and the following 15th May;
- (d) the farmer shall graze the land with livestock between 16th May and 31st October in any given year but not so as to cause poaching, overgrazing or undergrazing; and
- (e) the farmer shall not exceed a grazing density of one bovine animal per 0.75 hectares of the land between 16th May and 30th June in any given year.

SCHEDULE 4

Articles 4(2) and 5(2)(c)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 9, PART II, ITEM 3 RELATE

As regards any grassland subject under the agreement to the requirements set out in Schedule 2 or Schedule 3, requirements to the effect that—

- (a) the farmer shall agree with the Minister a plan of water management for the creation, reinstatement and management of foot drains and grips;
- (b) the farmer shall—
 - (i) ensure that water is maintained in the dykes at not more than 30 centimetres below marsh level between 15th March and 31st August in any given year; and
 - (ii) shall begin to raise water levels to their summer maximum no later than 15th February in any given year;
- (c) the farmer shall not apply any fertiliser or manure to the grassland;
- (d) the farmer shall not exceed a grazing density of one bovine animal per 0.75 hectare of the grassland between 1st April and 31st May in any given year; and
- (e) the farmer shall not graze the land with sheep between 1st June and—
 - (i) 31st December, where the requirements of Schedule 2 apply to that land; and
 - (ii) 31st October, where the requirements of Schedule 3 apply to that land,in any given year.

SCHEDULE 5

Articles 4(2) and 5(2)(d)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 9, PART II, ITEM 4 RELATE

As regards any land which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall agree a programme of fen management with the Minister and shall implement that programme;
- (b) the farmer shall not apply any fertiliser to the land;
- (c) the farmer shall not apply any lime, slag or other substance designed to reduce the acidity of the soil of the land; and
- (d) the farmer shall not use pesticides, fungicides, herbicides or insecticides on the land.

SCHEDULE 6

Articles 4(2) and 5(2)(e)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 9, PART II, ITEMS 5 and 6 RELATE

Option 1

1. A requirement to the effect that, as regards any land which is subject to the agreement, which is suitable for reversion to permanent grassland and which on 31st August 1991 was in arable cropping or had been in ley management for less than five years as part of an arable rotation—

- (a) within twelve months of the commencement of the agreement, the farmer shall cease arable production on the land and shall establish a grass sward on it; and
- (b) during the period of twelve months from the commencement of the agreement, the farmer shall not apply—
 - (i) fertiliser to the land,
 - (ii) lime, slag or any other substance designed to reduce the acidity of the soil of the land, or
 - (iii) pesticides to the land,without obtaining the Minister's prior approval.

2. A requirement to the effect that the farmer shall observe the requirements of Schedule 1, paragraph 1 from the expiry of the twelve month period referred to in paragraph 1(b) above in relation to the land referred to in paragraph 1 above.

3. A requirement to the effect that the farmer shall not exceed a stocking level of 1.4 livestock units per hectare of the land referred to in paragraph 1 above, and for the purposes of this paragraph, "livestock unit" means—

- (a) 1 bovine animal more than 2 years old;
- (b) 1.66 bovine animals no younger than 6 months old but less than 2 years old;
- (c) 6.66 sheep; or
- (d) 1 horse more than 6 months old or pony more than 6 months old.

Option 2

1. As regards any strip which is subject to the agreement, requirements to the effect that—

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- (a) within twelve months of the commencement of the agreement the farmer shall cease arable production on the strip and shall establish a grass sward on it;
 - (b) the farmer shall cut the strip annually after 30th June in any given year and shall ensure that the cuttings do not enter any dyke on the land subject to the agreement;
 - (c) the farmer shall not apply to the strip without the prior approval of the Minister—
 - (i) fertiliser,
 - (ii) lime, slag or any other substance designed to reduce the acidity of the soil on it, or
 - (iii) fungicide and insecticides; and
 - (d) subject to paragraph 2 below, the farmer shall not apply herbicides to the grassland except to control nettles, spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort, shall control infestations of those weeds by cutting or by herbicides, and if using herbicides for that purpose shall apply them by weed wiper or by spot treatment; and
2. A provision to the effect that, notwithstanding paragraph 1(d) above, the farmer may cultivate and apply herbicides to that part of the strip up to 1 metre wide which adjoins land in cultivation where it is desirable so to do in order to maintain a sterile area.

SCHEDULE 7

Articles 4(2) and 5(3)

REQUIREMENTS AS TO PUBLIC ACCESS

As regards any access route which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall make the access route available for public access at no charge;
- (b) the farmer shall maintain free passage over the access route;
- (c) the farmer shall not erect new fences on or adjacent to the access route without the prior written approval of the Minister;
- (d) the farmer shall keep the access route and fields crossed by it free of litter and other refuse;
- (e) the farmer shall exclude bulls from the access route and fields crossed by it, except for any bull which—
 - (i) does not exceed the age of 10 months, or
 - (ii) 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;
- (f) the farmer shall provide and maintain adequate means of entry to the access route;
- (g) the farmer shall affix and maintain appropriate signboards and waymarking;
- (h) the farmer shall not permit any of the following activities on the access route or on fields crossed by it—
 - (i) camping,
 - (ii) caravanning,
 - (iii) lighting of fires,
 - (iv) organised games or sports,
 - (v) riding of motor vehicles (except for those used for agricultural operations),without the Minister's prior written approval;

- (i) the farmer shall agree in advance with the Minister in writing whether or not the riding of horses or cycles is to be permitted on the access route, and shall not permit such activities other than to the extent so agreed;
- (j) 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 and, where the access route is closed as agreed, shall ensure 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; and
- (k) the farmer shall agree in advance with the Minister in writing public liability insurance cover and shall maintain it for the duration of the agreement.

SCHEDULE 8

Articles 4(2) and 5(5)

CONSERVATION PLAN OPERATIONS

1. The creation or restoration of scrapes, dykes, ditches and footdrains.
2. The restoration of fen areas including the creation or restoration of reed and sedge beds, marsh hay and litter marshes, and the control of scrub.
3. The construction of water level penning structures including bunds, sluices, culverts and other works to control water levels.
4. The replacement of metal field gates with wooden gates.
5. The provision of fencing associated with the introduction or re-introduction of grazing.
6. The provision of liggers and bridges.
7. The creation or re-creation of herb rich meadows.
8. The creation or restoration of ponds.
9. The planting, laying or coppicing of hedges.
10. Works to protect historic and archaeological features.
11. Works designed to restore or create landscape features or features for the benefit of wildlife in a matter compatible with the enhancement of the environment.
12. The provision and restoration of gates, stiles and footbridges where the agreement includes the requirements of Schedule 7 as to public access.
13. Tree planting and the re-introduction of pollarding of trees.

SCHEDULE 9

Article 5

MAXIMUM PAYMENT RATES

Part I

A maximum rate of £145 per annum.

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Part II

<i>Item</i>	<i>Schedule</i>	<i>Maximum rate in £ per hectare of land per annum</i>
1	Schedule 2	225
2	Schedule 3	300
3	Schedule 4	35
4	Schedule 5	100
	Schedule 6:	
5	Option 1	260
6	Option 2	330

Part III

A maximum rate of £170 per annum.

Part IV

A maximum sum of £100,000 per agreement.

SCHEDULE 10

Article 6

AMENDMENTS TO THE ENVIRONMENTALLY SENSITIVE AREAS (THE BROADS) DESIGNATION ORDER 1992

1. The Environmentally Sensitive Areas (The Broads) Designation Order 1992⁽¹⁰⁾ is amended in accordance with the following provisions of this Schedule.

2. In article 2 (interpretation)—

(a) in paragraph (1) for the definition of “conservation plan” there is substituted the following definition—

““conservation plan” means a plan which the farmer undertakes or has undertaken as part of an agreement to implement within a period of two years, for the carrying out of one or more of the operations specified in Schedule 5 (or in Schedule 8 to the Environmentally Sensitive Areas (The Broads) Designation Order 1997);” and

(b) in paragraph (2), for the words “shall be construed as” there are substituted the words “(with no corresponding reference to a specific instrument) is”.

3. In article 6 (rates of payment under agreement) for paragraphs (2) and (3) there are substituted the following paragraphs—

“(2) Where an agreement includes the additional provisions specified in—

(a) Schedule 2 or 3,

(b) one or more of the options contained in Schedule 4, or

(c) Schedule 4 or 5 to the Environmentally Sensitive Areas (The Broads) Designation Order 1997,

⁽¹⁰⁾ S.I. 1992/54, amended by S.I. 1994/929, S.I. 1996/921, S.I. 1996/3104.

the Minister shall make payments for each hectare of land which under the agreement is subject to those additional provisions at the rate per annum shown in the following table—

<i>Schedule</i>	<i>£ per hectare of land per annum</i>
Schedule 2	225
Schedule 3	300
Schedule 4:	
Option 1	260
Option 2	330
Schedule 4 to the Environmentally Sensitive Areas (The Broads) Designation Order 1997.	35
Schedule 5 to the Environmentally Sensitive Areas (The Broads) Designation Order 1997.	100

(3) Where an agreement includes a conservation plan, the Minister shall also make payments in respect of the operations included in the plan, up to a maximum sum of £100,000 per agreement.”

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”) the power to designate an area in England 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 is made pursuant to Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p. 85, as last amended by Commission Regulation (EC) No. 2772/95 (OJ No. L288, 1.12.95, p. 35)) and implements in part a zonal programme approved thereunder, designates an area in the Broads as an environmentally sensitive area (article 3). The previous designation of an environmentally sensitive area in the Broads is, in so far as it is made under section 18 of the 1986 Act, revoked, with saving provisions (article 6 and Schedule 10). The provisions of the previous designation Order so revoked are all those which do not derive from S.I. 1996/3104; those which derive from S.I. 1996/3104 are revoked, with a saving, by the Environmentally Sensitive Areas (England) Designation Orders (Revocation of Specified Provisions) Regulations 1997. The newly 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 if the Minister considers that

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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(1) and Schedule 1), and provisions in relation to additional matters which may be included (article 4(2) and Schedules 2 to 8). The rates of payment which may be made under an agreement in respect of those requirements are set out (article 5 and Schedule 9).

Management agreements covered by this Order are also subject to Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p. 19) laying down detailed rules for the application of the Council Regulation 2078/92, which Commission Regulation has been amended by Commission Regulation (EC) No. 435/97 (OJ No. L67, 7.3.97, p. 2).

No compliance cost assessment has been prepared in relation to this Order.