
STATUTORY INSTRUMENTS

1997 No. 1443

AGRICULTURE

**The Environmentally Sensitive Areas
(South Downs) 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 following 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 (South Downs) Designation Order 1997 and shall come into force on 1st July 1997.

(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.

Interpretation

2.—(1) In this Order—

“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;

“chalk downland” means grassland situated on undulating chalk hills;

“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 and includes meadowland, chalk downland and rough grazing;

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

“river valley grassland” means grassland other than chalk downland situated within a river valley; 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.

(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 South Downs in the Counties of Hampshire and East and West Sussex which is shown coloured yellow on the maps contained in the volume of maps marked “Volume of maps of the South Downs Environmentally Sensitive Area” dated 13th January 1992 signed and sealed by the Minister 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, subject only to the exceptions specified in Schedules 2 and 3.

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

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 7 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; and

(c) the options contained in Schedule 4,

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 7.

(3) An agreement may include requirements as to public access specified in Schedule 5 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 7 for each hectare of access route.

(4) Where an agreement includes a conservation plan, the Minister may also make payments in consideration of the operations included in the plan, up to the maximum sum set out in Part IV of Schedule 7.

(5) For the purposes of paragraph (5) 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 6.

(6) In this article and Schedule 7 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 (South Downs) Designation Order 1992⁽⁵⁾ is, insofar 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 (South Downs) Designation Order 1986 and the Environmentally Sensitive Areas (South Downs—Western Extension) Designation Order 1987⁽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 8 shall continue to apply to other 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 (South Downs) Designation (Amendment) (No. 2) Order 1994⁽⁷⁾ and the Environmentally Sensitive Areas (South Downs) 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

(5) S.I. 1992/52, amended by S.I. 1994/931, S.I. 1996/924, S.I. 1996/3104.

(6) S.I. 1986/2249 and S.I. 1987/2032 respectively. Both were amended by S.I. 1988/174, and revoked subject to a saving by S.I. 1992/52.

(7) S.I. 1994/931, which itself revoked the first amendment to S.I. 1992/52.

(8) S.I. 1996/924.

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We consent

5th June

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

SCHEDULE 1

Article 4(1)

REQUIREMENTS TO BE INCLUDED IN AGREEMENT

1. As regards any chalk downland which is subject to the agreement, a requirement to the effect that the farmer shall maintain it as grassland and shall not plough, chain harrow, roll, level, re-seed or otherwise cultivate it.

2. As regards any river valley grassland which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall maintain it as grassland and shall not plough, level or re-seed or otherwise cultivate it and the farmer shall not use a chain harrow or roller on it between 31st March and 1st July in any given year;
- (b) where the maintenance of water levels is within the farmer's control, the farmer shall ensure that—
 - (i) between 31st March and 1st October in any year ditch water levels are not less than 30 centimetres and not more than 60 centimetres below grassland level, and
 - (ii) ditches are not allowed to dry out completely.

3. As regards all grassland which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall graze the land with cattle or sheep but not in such a manner as to cause poaching, undergrazing or overgrazing and shall, within 18 months of the start of the agreement, agree with the Minister a grassland management plan and shall implement that plan;
- (b) the farmer shall not cut grass for hay or silage nor top the grass before 1st July in any given year;
- (c) the farmer shall not apply any fertiliser to the land;
- (d) the farmer shall not use fungicides and insecticides on the land;
- (e) the farmer shall control weeds and shall not apply to the land herbicides except to control nettles, spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort or for stump treatment of cleared scrub and if using herbicides for that purpose shall apply them by hand-held weed wiper or by spot treatment with a knapsack sprayer;
- (f) the farmer shall not apply to the land lime or slag or any substance designed to reduce the acidity of the soil;
- (g) the farmer shall not install any new drainage system or otherwise substantially modify any existing drainage system;
- (h) the farmer shall not fill in any existing ditches and shall maintain them by mechanical means and shall level spoil after allowing it to dry;
- (i) the farmer shall restrict supplementary feeding of livestock to areas agreed in advance with the Minister;
- (j) the farmer shall protect and maintain dewponds, reedbeds and ponds;
- (k) the farmer shall maintain stockproof walls in a stockproof condition using traditional materials, and shall maintain hedges in a stockproof condition;
- (l) the farmers shall maintain any weatherproof field barn for which he is responsible in a weatherproof condition using traditional materials;
- (m) the farmer shall not damage or destroy any feature of historic interest;
- (n) 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

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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;

- (o) the farmer shall obtain written advice on the management of any woodland, trees or scrub or proposals to plant new woodland from a person approved by the Minister for the purpose of giving that advice; and
- (p) in relation to any scrub, the farmer shall agree with the Minister in writing within 12 months of the start of the agreement a scrub management programme and shall implement that programme.

SCHEDULE 2

Articles 4(1) and (2) and 5(2)(a)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 7, PART II, ITEM 1 RELATE

As regards any land which is the subject of an agreement, which is suitable for reversion to chalk downland and which either has been converted from arable land to grassland under a previous agreement or, 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, requirements to the effect that—

- (a) the farmer shall cease arable or intensive grassland production and shall establish a grassland sward within twelve months of the start of the agreement using a seed mixture agreed by the Minister;
- (b) during a period of twelve months from the start of the agreement the farmer shall not apply to the land—
 - (i) any fertiliser,
 - (ii) lime, slag or any substance designed to reduce the acidity of the soil, or
 - (iii) any pesticide,
 without obtaining the Minister’s prior approval;
- (c) during each of the three years following grassland establishment, the farmer shall cut the grassland sward, shall remove the cuttings as hay or silage and graze the aftermath, and shall not make the first cut before 1st July in any given year;
- (d) the farmer shall not exceed a stocking level of 1.4 livestock units per hectare of the land, and for the purposes of this paragraph, “livestock unit” means—
 - (i) 1 bovine animal more than 2 years old;
 - (ii) 1.66 bovine animals no younger than 6 months old but less than 2 years old;
 - (iii) 6.66 sheep; or
 - (iv) 1 horse more than 6 months old or pony more than 6 months old; and
- (e) after the expiry of the twelve month period referred to in paragraph (a) above, the farmer shall also observe the requirements of Schedule 1, paragraph 1, except that he may cultivate the grassland sward using a chain harrow or roller during the three years from the start of the agreement.

(9) S.I. 1995/418.

SCHEDULE 3

Articles 4(1) and (2) and 5(2)(b)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 7, PART II, ITEM 2 RELATE

As regards any land which is the subject of an agreement, which is suitable for reversion to permanent grassland and which either has been converted from arable land to grassland under a previous agreement or, 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, requirements to the effect that—

- (a) except where reversion to grassland has already taken place, the farmer shall cease arable production and establish a grassland sward within twelve months of the start of the agreement;
- (b) during a period of twelve months from the start of the agreement the farmer shall not apply to the land—
 - (i) any fertiliser,
 - (ii) lime, slag or any substance designed to reduce the acidity of the soil, or
 - (iii) any pesticide,without obtaining the Minister's prior approval;
- (c) the farmer shall not exceed a stocking level of 1.4 livestock units per hectare of the land, and for the purposes of this paragraph, "livestock unit" means—
 - (i) 1 bovine animal more than 2 years old;
 - (ii) 1.66 bovine animals no younger than 6 months old but less than 2 years old;
 - (iii) 6.66 sheep; or
 - (iv) 1 horse more than 6 months old or pony more than 6 months old; and
- (e) after the expiry of the twelve month period referred to in paragraph (a) above, the farmer shall also observe the requirements of—
 - (i) Schedule 1 paragraph 1 (in relation to chalk downland), or Schedule 1 paragraph 2 (in relation to river valley grassland) except that he may chain harrow or roll the land before 31 March with the Minister's prior approval; and
 - (ii) Schedule 1 paragraph 3(c) except that, once the sward has been established for three years, the farmer may, with the prior approval of the Minister, apply to the land up to 40 kg of nitrogen per hectare per year or 15 tonnes of farmyard manure per hectare per year.

SCHEDULE 4

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

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 7, PART II, ITEMS 3, 4 AND 5 RELATE

Option 1

In relation to any arable land which is subject to the agreement, requirements to the effect that—

- (a) the farmer shall leave an area of stubble after harvest of an arable crop until the following 30th November,
- (b) on or after the following 1st December, the farmer shall sow a spring cereal crop undersown with a mixture of grass and clover, and

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- (c) the farmer shall leave the mixture in question undisturbed until 30th June in the year following harvest of that spring cereal crop.

Option 2

In relation to any land which is subject to the agreement, a requirement to the effect that the farmer shall leave an area of stubble after harvest of an arable crop until the following 15th February.

Option 3

1. As regards any strip which is subject to the agreement, requirements to the effect that—
 - (a) the farmer shall not apply to the strip insecticides except during the period from 31st August in any given year to the following 1st January;
 - (b) subject to paragraph 2 below, the farmer shall not apply herbicides to the strip other than—
 - (i) Tri-allate, diclofop-methyl, difenzoquat, flumprop-M-isopropyl benzoylpropethyl or fenoxapropethyl;
 - (ii) Glyphosate applied in the pre-harvest period by spot treatment and solely for the control of couch, black bent or onion couch;
 - (iii) Fluroxypyr applied by spot treatment and solely for the control of cleavers;without the period written consent of the Minister.
2. A provision to the effect that, notwithstanding paragraph 1(b) above, the farmer may cultivate and apply herbicides to that part of the strip up to 1 metre wide which adjoins a field boundary where it is desirable so to do in order to maintain a sterile area.

SCHEDULE 5

Articles 4(2) and 5(3)

REQUIREMENTS AS TO PUBLIC ACCESS

As regards any access route which is subject to the agreement—

- (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 without the Minister's prior written approval 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) organized games or sports;
- (v) riding of motor vehicles (except for those used for agricultural operations);
- (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 so 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 6

Articles 4(2) and 5(5)

CONSERVATION PLAN OPERATIONS

1. The building or rebuilding of flint walling using traditional materials.
2. The planting, laying or coppicing of hedges.
3. The renovation of barns using traditional materials.
4. The management of scrub.
5. The provision of fencing and water supplies for livestock associated with the reintroduction of grazing.
6. The construction of water level penning structures such as bunds and sluices in order to raise ditch water levels.
7. The creation or restoration of ponds, scrapes, ditches and reedbeds.
8. Works to protect historic and archaeological features.
9. Works designed to restore or create landscape features or features for the benefit of wildlife in a manner compatible with the enhancement of the environment.
10. The provision and restoration of gates, stiles and footbridges where the agreement includes the requirements of Schedule 5 as to public access.
11. Tree planting.
12. The provision and restoration of stiles.
13. The purchase and use of a diverse seed mix for reversion of arable land to chalk grassland or for sward enhancement of permanent grassland reverted from arable land.

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SCHEDULE 7

Article 5

MAXIMUM PAYMENT RATES

Part I

A maximum rate of £40 per annum

Part II

<i>Item</i>	<i>Schedule</i>	<i>Maximum rate in £ per hectare of land per annum</i>
1	Schedule 2	290
2	Schedule 3	250
	Schedule 4	
3	–Option 1	110
4	–Option 2	90
5	–Option 3	80

Part III

A maximum rate of £170 per annum

Part IV

A maximum sum of £100,000 per agreement

SCHEDULE 8

Article 6

AMENDMENTS TO THE ENVIRONMENTALLY SENSITIVE
AREAS (THE SOUTH DOWNS) DESIGNATION ORDER 1992

1. The Environmentally Sensitive Areas (South Downs) 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 Schedule 6 to the Environmentally Sensitive Areas (South Downs) Designation Order 1997);”;

(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”.

(10) S.I. 1992/52, amended by S.I. 1994/931, S.I. 1996/924, S.I. 1996/3104.

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) one or more of the options contained in Schedule 2,
- (b) either or both of options 1 or 2 contained in Schedule 4 to the Environmentally Sensitive Areas (South Downs) Designation Order 1997,

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	
–Option 1	290
–Option 2	250
–Option 3	80
	Schedule 4 to the Environmentally Sensitive Areas (South Downs) Designation Order 1997:
–Option 1	110
–Option 2	90

(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 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. 35, as last amended by Commission Regulation (EC) No. 2772/95 (OJ No. L288, 1.12.95, p. 83)) and implements in part a zonal programme approved thereunder, designates an area in the South Downs as an environmentally sensitive area (article 3). The previous designation of the same environmentally sensitive area in the South Downs is, in so far as it is made under section 18 of the 1986 Act, revoked, with saving provisions (article 6 and Schedule 8). 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

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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 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 the requirements in relation to additional matters in respect of which the Minister may make payments which may be included (article 4 and Schedules 2 to 6). The rates of payment which may be made under an agreement in respect of those requirements are set out (article 5 and Schedule 7).

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.