

Statutory Instrument 1997 No. 1442

The Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997

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STATUTORY INSTRUMENTS

1997 No. 1442

AGRICULTURE

The Environmentally Sensitive Areas (Somerset Levels and Moors) 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 the 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 was 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 (Somerset Levels and Moors) Designation Order 1997 and shall come into force on 1st July 1997.

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;

"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 and rough grazing; and

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

(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 Somerset Levels and Moors in the County of Somerset which is shown coloured yellow on the maps contained in the volume of maps marked "Volume of maps of the Somerset Levels and Moors 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 and 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, 8 and 9.

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 10 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,

(e) Schedule 6, and

(f) Schedule 7,

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 additional provisions, as set out opposite the reference to that Schedule in Part II of Schedule 10.

(3) An agreement may include the requirements as to public access specified in Schedule 8 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 10 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 10.

(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 9.

(6) In this article and Schedule 10 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 (Somerset Levels and Moors) 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 9 of that Order in respect of the provisions of the Environmentally Sensitive Areas (Somerset Levels and Moors) 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 11, 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 (Somerset Levels and Moors) Designation (Amendment) (No. 2) Order 1994[7] and the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation (Amendment) Order 1996[8] are hereby revoked, but not so as to affect the exceptions referred to in paragraph (1) of this article.

Elliot Morley

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

4th June 1997

We consent

Bob Ainsworth

Jon Owen Jones

Two of the Lords Commissioners of Her Majesty's Treasury

5th June 1997

SCHEDULE 1

Article 4(1)

REQUIREMENTS TO BE INCLUDED IN AGREEMENT

1. As regards all land which is the subject of the agreement, requirements to the effect that-

(a) the farmer shall maintain grassland and shall not plough, level or reseed it, and shall not cultivate it except with a chain harrow or roller;

(b) the farmer shall graze the land with cattle or sheep but not so as to cause poaching, undergrazing or overgrazing;

(c) where the farmer cuts grass for hay or silage, he shall graze the aftermath;

(d) the farmer shall not increase existing application rates of inorganic fertiliser and shall not in any event apply more than 75 kilogrammes of nitrogen, 37.5 kilogrammes of phosphate or 37.5 kilogrammes of potash per hectare of the land per year;

(e) the farmer shall not increase existing application rates of organic fertiliser

produced on his own farm and shall not apply any other organic fertiliser;

(f) the farmer shall not apply fungicides or insecticides to the land;

(g) the farmer shall not apply herbicides to the land except to control creeping buttercup, soft rush, nettles, spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort and if using herbicides for that purpose shall apply them by weed wiper or spot treatment;

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

(i) the farmer shall not use a sub-soiler or tunnel plough, or install under-drainage or mole drainage, or otherwise substantially modify an existing drainage system;

(j) the farmer shall maintain by mechanical means any existing field gutters, surface piping, rig and furrow, ditch or rhyne and shall not use herbicides to control plant growth therein, and shall not install any additional surface piping;

(k) the farmer shall not use spray irrigation;

(l) the farmer shall maintain existing hedges, trees and pollarded willows in accordance with local custom;

(m) the farmer shall not plant any trees or allow the natural establishment of trees or bushes without the prior approval of the Minister;

(n) the farmer shall not damage or destroy any feature of historic interest;

(o) the farmer shall obtain from the Minister written advice on siting and materials 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[2] or planning permission;

(p) the farmer shall maintain existing gates with wing fencing but shall not erect any permanent fencing without the Minister's prior approval;

(q) the farmer shall maintain water levels in ditches and rhynes at or above the established penning level, fixed by reference to gauge boards set to Ordnance Datum Newlyn, from 1st April until 31st October in any given year and at or above the established winter level, fixed by reference to gauge boards set to Ordnance Datum Newlyn, from 1st November in any given year until the following 31st March and shall maintain a minimum level of 15 centimetres of water in the bottom of ditches and rhynes at all times.

SCHEDULE 2

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

**ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN
SCHEDULE 10, PART II, ITEM 1 RELATE**

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

- (a) the farmer shall not use a chain harrow or roller between 31st March and 1st July in any given year;**
- (b) the farmer shall not increase existing application rates of inorganic fertiliser and shall not in any event apply more than 25 kilogrammes of nitrogen, 12.5 kilogrammes of phosphate or 12.5 kilogrammes of potash per hectare per year;**
- (c) where land has not been used solely for grazing, the farmer shall mow at least one third of the area of land each year (or shall mow the whole of the area during one year in every three years) but shall not do so before 1st July in any given year and shall not graze the land before laying it up;**
- (d) the farmer shall not cut or top the grass after 31st August in any given year;**
- (e) the farmer shall not graze sheep between 1st September in any given year and the following 1st March;**
- (f) the farmer shall not use herbicides to control creeping buttercup.**

SCHEDULE 3

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

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 10, PART II, ITEM 2 RELATE

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

- (a) the farmer shall not use a chain harrow or roller between 31st March and 1st July in any given year;**
- (b) the farmer shall not increase existing application rates of inorganic fertiliser and shall not in any event apply more than 25 kilogrammes of nitrogen, 12.5 kilogrammes of phosphate or 12.5 kilogrammes of potash per hectare per year;**
- (c) where land has not been used solely for grazing, the farmer shall mow at least one third of the area of land each year (or shall mow the whole of the area during one year in every three years) but shall not do so before 1st July in any given year and shall not graze the land before laying it up;**
- (d) the farmer shall not cut or top the grass after 31st August in any given year;**
- (e) the farmer shall not graze sheep between 1st September in any given year and the following 1st March;**
- (f) the farmer shall not use herbicides to control creeping buttercup;**
- (g) the farmer shall ensure that water levels in ditches and rhynes are maintained at or above the established penning level, to be fixed by reference to gauge boards set to Ordnance Datum Newlyn, or at not lower than 45 centimetres below mean field level, whichever is the higher, from 1st April until**

31st October in any given year, and shall maintain water levels at or above the established winter level, fixed by reference to gauge boards set to Ordnance Datum Newlyn, from 1st November in any given year until 31st March in the following year, and shall maintain a minimum level of 30 centimetres of water in the bottom of ditches and rhynes at all times.

SCHEDULE 4

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

ADDITIONAL PROVISION TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 10, PART II, ITEM 3 RELATE

As regards any land which is subject to the agreement but to which neither the provisions of Schedule 2 nor the provisions of Schedule 7 apply, a requirement to the effect that the farmer shall maintain water levels in ditches and rhynes at not lower than 30 centimetres below mean field level from 1st May until 30th November in any given year and shall maintain water levels at or above mean field level (so as to cause conditions of surface splashing) from 1st December in any given year until the following 30th April.

SCHEDULE 5

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

ADDITIONAL PROVISION TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 10, PART II, ITEM 4 RELATE

As regards all land subject to the agreement except any land to which the requirements set out in Schedule 7 apply, a requirement to the effect that the farmer shall cease application of inorganic fertiliser to a strip of land at least 6 metres wide adjacent to all field boundaries situated on that land.

SCHEDULE 6

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

ADDITIONAL PROVISION TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 10, PART II, ITEM 5 RELATE

As regards any peat land subject to the agreement except any land to which the requirements set out in Schedule 7 apply, a requirement to the effect that the farmer shall maintain the water level in ditches and rhynes at or above the summer penning level, fixed by reference to gauge boards set to Ordnance Datum Newlyn, from 1st November in any given year to the following 31st March.

SCHEDULE 7

Articles 4(2) and 5(2)(f)

ADDITIONAL PROVISIONS TO WHICH PAYMENTS REFERRED TO IN SCHEDULE 10, PART II, ITEM 6 RELATE

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

- (a) the farmer shall not carry out any mechanical operations on the land between 31st March and 1st July in any given year;**
- (b) the farmer shall not apply to the land slurry or inorganic fertiliser and shall not increase existing application rates of organic fertiliser, and he shall not apply to the land farmyard manure except manure which has been produced on his farm and shall not apply more than 25 tonnes per hectare per year;**
- (c) the farmer shall not graze the land before 20th May in any given year and shall graze it only with cattle thereafter, and in so grazing the land he shall not exceed a grazing density of one animal per 0.75 hectares from 20th May until 8th July in any given year and in any event he shall not graze the land in such a manner as to cause poaching, overgrazing or undergrazing;**
- (d) the farmer shall not make silage and, where land has not been used solely for grazing, the farmer shall mow at least one third of the area of land each year (or shall mow the whole of the area during one year in every three years) but shall not do so before 8th July in any given year and shall not graze the land before laying it up;**
- (e) the farmer shall not cut or top the grass after 31st August in any given year;**
- (f) the farmer shall not use herbicides to control creeping buttercup;**
- (g) the farmer shall, unless agreed in writing with the Minister otherwise, maintain water levels in ditches and rhynes at not more than 30 centimetres below mean field level from 1st May until 30th November in any given year, and shall maintain water levels at or above mean field level (so as to cause conditions of surface splashing) from 1st December in any given year until the following 30th April.**

SCHEDULE 8

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 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) organised 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 shall 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;**
- (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 9

Articles 4(2) and 5(5)

CONSERVATION PLAN OPERATIONS

- 1. The planting, laying and coppicing of hedges.**
- 2. The re-introduction of pollarding management including the planting of willows for future pollarding.**
- 3. The renovation of shelter belts and the planting of trees.**
- 4. The construction of water level penning structures such as bunds and sluices in order to raise water levels in rhynes and ditches.**
- 5. The reinstatement of gutters, dykes and ditches.**
- 6. The provision of timber gates and timber wing fencing.**
- 7. The removal of fencing alongside ditches and rhynes.**
- 8. The removal of scrub.**
- 9. The construction or re-construction of culverts.**
- 10. The improvement of droves within raised water level areas.**
- 11. The conversion of arable land to permanent grassland.**
- 12. The creation or improvement of botanically diverse meadows, ponds or scrapes.**
- 13. Works to protect historic and archaeological features.**
- 14. 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.**
- 15. The provision and restoration of gates, stiles and footbridges where the agreement includes the requirements of Schedule 8 as to public access.**
- 16. The renovation of farm buildings using traditional materials.**
- 17. The restoration and replanting of traditional orchards.**

SCHEDULE 10

Article 5

MAXIMUM PAYMENT RATES

PART I

A maximum rate of £130 per annum

PART II

<i>Item</i>	<i>Schedule</i>	<i>Maximum rate in £ per hectare of land per annum</i>
1	Schedule 2	195
2	Schedule 3	215
3	Schedule 4	80
4	Schedule 5	190
5	Schedule 6	18
6	Schedule 7	415

PART III

A maximum rate of £170 per annum

PART IV

A maximum sum of £100,000 per agreement

SCHEDULE 11

Article 6

AMENDMENTS TO THE ENVIRONMENTALLY SENSITIVE AREAS (THE SOMERSET LEVELS AND MOORS) DESIGNATION ORDER 1992

1. The Environmentally Sensitive Areas (Somerset Levels and Moors) 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 9 to the Environmentally Sensitive Areas (Somerset Levels and

Moors) 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-

(a) the additional provisions specified in Schedule 2, 3 or 4,

(b) the additional provisions specified in Schedule 2 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997, or

(c) in relation to land which is the subject of the provisions of Schedule 2 (or Schedule 2 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997), provisions equivalent to those in Schedule 5 or 6 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997, the Minister shall make payments for each hectare of land which under the agreement is subject to those additional provisions or options at the rate per annum shown in the following table-

<i>Schedule</i>	<i>£ per hectare of land per annum</i>
Schedule 2	215
Schedule 3	80
Schedule 4	415
Schedule 2 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997.	195
Provisions equivalent to Schedule 5 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997.	190
Provisions equivalent to Schedule 6 to the Environmentally Sensitive Areas (Somerset Levels and Moors) Designation Order 1997.	18

(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 the 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 Regulations (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 Somerset Levels and Moors as an environmentally sensitive area (article 3). The previous designation of an environmentally sensitive area in the Somerset Levels and Moors is, in so far as it is made under section 18 of the 1986 Act, revoked, with saving provisions (article 6 and Schedule 11). 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 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 under the agreements which may be included (article 4(2) and Schedules 2 to 9). The rates of payment which may be made under an agreement in respect of those requirements are set out (article 5 and Schedule 10).

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.

Notes:

[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.

[5] S.I. 1992/53, amended by S.I. 1994/932, S.I. 1996/920, S.I. 1996/3104.

[6] S.I. 1986/2252, amended by S.I. 1988/176, and revoked subject to a saving by S.I. 1992/53.

[7] S.I. 1994/932, which itself revoked the first amendment to S.I. 1992/53.

[8] S.I. 1996/920.

[9] S.I. 1995/418.

[10] S.I. 1992/53, amended by S.I. 1994/932, S.I. 1996/920, S.I. 1996/3104.

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