

Statutory Instrument 1990 No. 1013

**The Nitrate Sensitive Areas (Designation) Order 1990**

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STATUTORY INSTRUMENTS

**1990No. 1013**

**WATER, ENGLAND AND WALES AGRICULTURE**

The Nitrate Sensitive Areas (Designation) Order 1990

<i>Made</i>	<i>26th April 1990</i>
<i>Laid before Parliament</i>	<i>11th May 1990</i>
<i>Coming into force</i>	<i>1st June 1990</i>

Whereas the Minister of Agriculture, Fisheries and Food and the Secretary of State for the Environment consider it appropriate to designate the land referred to in Article 3 of the following Order as nitrate sensitive areas, for the purpose mentioned in section 112 of the Water Act 1989<sup>[1]</sup>;

And whereas an application has been made by the National Rivers Authority in accordance with paragraph 2 of Schedule 11 to the said Act;

Now, therefore, the Minister of Agriculture, Fisheries and Food and the Secretary of State for the Environment, acting jointly in exercise of the powers conferred on them by section 112 of the said Act, and of all other powers enabling them in that behalf, with the consent of the Treasury, hereby make the following Order:-

**Title, commencement and extent**

1.—(1) This Order may be cited as the Nitrate Sensitive Areas (Designation) Order 1990 and shall come into force on 1st June 1990.

(2) This Order shall apply to England only.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires:

"agreement" means an agreement entered into by the Minister under section

112(2) of the Water Act 1989 as regards agricultural land in an area designated by article 3;

"Agricultural Land Tribunal" means an Agricultural Land Tribunal established under Part V of the Agriculture Act 1947<sup>[2]</sup>;

"arable land" means land used for the production of any crop other than grass;

"autumn sown cereals" means cereals normally sown between 31st July in one year and 1st January in the following year;

"basic scheme agreement" means an agreement whereby a farmer agrees to comply with the obligations set out in Schedule 1;

"controlled waters" means the waters referred to in section 103(1) of the Water Act 1989;

"cover crop" means a crop sown primarily in order to take up nitrogen from the soil in autumn or winter;

"economic optimum" means the amount of inorganic nitrogen fertiliser applied in any year, such that if extra inorganic nitrogen fertiliser were applied in that year, having regard to the crop in question and the characteristics of the land on which it was planted, the cost of applying that fertiliser would be greater than the extra value of the additional yield of the crop produced;

"the farmer" means a person who has an interest in agricultural land in an area designated by article 3 and who has entered into an agreement with the Minister;

"Farm Woodland Scheme" means the Farm Woodland Scheme 1988<sup>[3]</sup>;

"forage crop" means a crop, other than grass, sown in July or August to be cut or grazed in the following autumn or winter;

"grassland" means land on which the vegetation consists predominantly of grass species;

"holding" means all the land farmed as a unit by or on behalf of a farmer;

"inorganic nitrogen fertiliser" means material, containing nitrogen, the main function of which is to provide plant food, and is in the form of inorganic salts obtained by extraction, physical industrial processes, chemical industrial processes, or a combination of any or all of these, and includes calcium cyanamide, and urea and its condensation products;

"the Minister" means the Minister of Agriculture, Fisheries and Food;

"organic nitrogen fertiliser" means animal manure, sewage sludge or any other organic materials containing nitrogen, but excluding calcium cyanamide, and urea and its condensation products;

"pig place" means the facilities needed to house one fattening pig, save that one pig with progeny over 4 weeks old shall be taken to need 6.5 pig places and one pig with weaners up to 4 weeks old shall be taken to need 1.4 pig places;

"poultry place" means the facilities needed to house one chicken (layers), one duck, or two chickens (broilers);

"premium scheme agreement" means an agreement whereby a farmer agrees to comply with the obligations set out in Schedule 2;

"slurry" means animal manure with a dry matter content by weight of less than 15% at any time.

(2) In this Order-

- (a) any reference to a numbered article or Schedule shall be construed as a reference to the article or Schedule so numbered in this Order;
- (b) any reference in an article or a Schedule to a numbered paragraph shall be construed as a reference to the paragraph so numbered in that article or Schedule; and
- (c) any reference in a paragraph to a numbered or lettered subparagraph shall be construed as a reference to the subparagraph so numbered or lettered in that paragraph.

**Designation of Nitrate Sensitive Areas**

3. There are hereby designated as nitrate sensitive areas, referred to in this Order by the names specified in Column 1 of Schedule 3, each of the areas which is shown coloured pink on the map bearing the appropriate number listed in Column 2 of that

Schedule opposite each name, each such map being dated 24th April 1990 signed and sealed by the Minister and the Secretary of State for the Environment and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London, SW1P 3HX.

### **Applications**

**4.—**(1) An application to enter into an agreement shall be made in the form prescribed by the Minister.

(2) An application by a producer of pigs or poultry which are permanently housed shall be accompanied by a plan showing how the applicant proposes, in order to comply with the obligations specified in Schedule 1 and otherwise avoid the entry of nitrate into controlled waters, to store, handle, transport and dispose of slurry or poultry manure, and to spread it on his own or any other land.

(3) An application to enter into an agreement in 1990 shall be made before 1st August 1990.

(4) An application to enter into an agreement in 1991 shall be made before 1st June 1991.

(5) A farmer who enters into a basic scheme agreement in 1990 may, before 1st June 1991, elect to enter into a premium scheme agreement.

(6) The Minister shall not enter into an agreement in respect of an application made after 31st May 1991.

### **Conditions of entry into an agreement**

**5.—**(1) Subject to paragraphs (3), (4) and (6) the Minister shall not enter into a basic scheme agreement except in respect of all the land in a nitrate sensitive area occupied by a farmer, or on his behalf, for agricultural purposes.

(2) The Minister shall not enter into a premium scheme agreement in respect of any land unless that land is the subject of a basic scheme agreement and has been arable land continuously since 31st July 1989.

(3) The Minister may enter into an agreement with a landlord and his tenant notwithstanding the fact that the land is not occupied by the landlord or on his behalf for agricultural purposes.

(4) The Minister may enter into an agreement with a farmer in respect of land in a nitrate sensitive area-

(a) of which the farmer has the freehold interest; or

(b) which the farmer holds under a tenancy from a landlord who has given his consent in writing to the making of an agreement,

although that farmer has other land in that nitrate sensitive area which he holds under a tenancy from a landlord who has not given his consent in writing to the making of an agreement.

(5) The Minister shall not enter into a premium scheme agreement in respect of a strip of land unless such strip is at least 15 metres wide.

(6) The Minister may refuse to enter into an agreement if he is satisfied that the farmer will be unable to comply with such agreement throughout the whole of its duration but he may enter into an agreement in respect of that part of the farmer's land in a nitrate sensitive area on which the farmer will be able to comply with such agreement throughout the whole of its duration.

(7) A farmer who enters into a premium scheme agreement and agrees to comply with the obligations listed in Option D in Schedule 2 but whose application to enter the Farm Woodland Scheme 1988 is rejected shall, on receipt of written notice of such rejection, notify the Minister with which of the Options A, B or C in that Schedule he will instead

comply, and he shall receive payments in respect of the Option so notified in respect of the period of the agreement.

(8) The Minister may refuse to enter into an agreement if he is satisfied that any payment under this Order would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Economic Community.

### **Monitoring of compliance with agreement**

6. An agreement shall contain a provision for the Minister and his servants or agents, where necessary in order to monitor compliance with that agreement or to assess the effectiveness of preventing the entry of nitrate into controlled waters of the measures contained within it-

- (a) to enter upon any land which is the subject of such agreement;
- (b) to take samples from the land;
- (c) to install equipment on the land; and
- (d) to examine all records kept in compliance with the said agreement.

### **Payments**

7.—(1) An agreement shall provide that the Minister shall make payments, in accordance with Schedule 4 in respect of land which is the subject of that agreement, following receipt of a claim by the farmer.

(2) The rates of payment specified in Schedule 4 above shall be reviewed by the Minister in 1993.

### **Recovery of Payments**

8.—(1) An agreement shall provide that where the farmer fails without reasonable excuse to comply with any of its provisions the Minister may:

- (a) by notice in writing terminate the agreement and thereafter withhold the whole or any part of any payment payable to the farmer, and recover the whole or any part of any payment already made to him;
- (b) withhold the whole or any part of any payment payable to the farmer in respect of the year in which he failed to comply and recover the whole or any part of any payment made to him.

(2) Subject to paragraph (3), any question arising under an agreement as to whether the agreement has been complied with shall be determined by the arbitration of a single arbitrator, to be agreed between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors, in accordance with the provisions of the Arbitration Acts 1950-1979.

(3) Any dispute as to the economic optimum shall be determined by a person appointed by agreement between the parties or, in the absence of such agreement, by a person appointed by the Chairman of the Regional Panel constituted by the Minister for the area in which the land is situated.

9.—(1) Where during the period of an agreement there is a change of occupation of the whole or any part of the land which is the subject of such agreement the Minister may withhold the whole or any part of any payment due to the farmer who entered into that agreement and may recover from him or his personal representatives the whole or any part of any payments of aid already paid to him.

(2) Paragraph (1) above shall not apply where:

- (a) the new occupier is a person deriving title from or under the farmer who entered into the agreement; or
- (b) the change of occupation is the result of:
  - (i) compulsory purchase of the whole or part of the holding; or
  - (ii) the termination of a tenancy following the operation of a notice to quit to which the Agricultural Land Tribunal has consented under section 26(1) of the Agricultural Holdings Act 1986<sup>[4]</sup> having been satisfied as to

any of the matters specified in section 27(3)(b) to (f) of that Act or the termination of a tenancy following the service of a notice to quit stating that the circumstances in Case A, B, D, G or H of Schedule 3 to that Act apply.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on  
24th April 1990.

*John Selwyn Gummer*  
Minister of Agriculture, Fisheries and Food

*Christopher Patten*  
Secretary of State for the Environment

26th April 1990  
We consent,

*Kenneth Carlisle*  
*Thomas Sackville*  
Two of the Lords Commissioners of Her Majesty's Treasury  
25th April 1990

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*Notes:*

- [1] 1989 c. 15. The expression "the Minister" is defined in section 189(1). back
- [2] 1947 c. 48. back
- [3] S.I. 1988/1291. back
- [4] 1986 c. 5. back