1993 No. 180

AGRICULTURE

Environmentally Sensitive Areas (West Fermanagh and Erne Lakeland) Designation Order (Northern Ireland) 1993

Made	*5th April 1993*
Coming into operation . .	*10th May 1993*

Whereas, in accordance with Article 3(1) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987(**a**), (''the 1987 Order'') it appears to the Department of Agriculture that it is particularly desirable—

(1) to conserve and enhance the natural beauty of the area referred to in Article 3;

(2) to conserve the flora and fauna and geological and physiographical features of that area; and

(3) to protect buildings and other objects of archaelogical, architectural or historic interest in that area;

And whereas, in accordance with the said Article 3(1) of the 1987 Order it appears to the Department of Agriculture that the maintenance and adoption of the agricultural methods specified in the Schedules is likely to facilitate the aforementioned conservation, enhancement and protection;

Now, therefore, the Department of Agriculture, in exercise of the powers conferred on it by Article 3(1) and (3) of the 1987 Order, and of every other power enabling it in that behalf, with the consent of the Department of Finance and Personnel hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Environmentally Sensitive Areas (West Fermanagh and Erne Lakeland) Designation Order (Northern Ireland) 1993 and shall come into operation on 10th May 1993.

Interpretation

2. In this Order—

''agreement'' means an agreement under Article 3(2) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987 as respects agricultural land in the area designated by Article 3;

(a) S.I. 1987/458 (N.I. 3)

"farm business" means a business or part of a business which engages in agricultural production for the purposes of trade;

"farm conservation plan" means a layout plan of the farm and an attached statement identifying relevant land and conservation features and setting out, as appropriate, details of how the requirements in the agreement will be implemented on the farm;

"farmer" means a person who has an estate in agricultural land in the area designated by Article 3 and who has entered into an agreement with the Department;

"hay meadow" means grassland primarily used for the production of hay;

"heather moorland" means land comprised of more than 25% heather or heather-like shrub cover;

"improved land" means grassland on which more than 20% of the sward is comprised of ryegrass, timothy, red fescue or white clover, any land under cultivation at the date of an agreement or any land (other than grassland) uncultivated at the date of an agreement but which has been previously cultivated;

"limestone grassland" means grassland containing or comprised of:

— limestone rock outcrops; or

— shallow soil overlying limestone;

"livestock" means bovine animals, sheep or goats;

"livestock unit" means—

(*a*) 1 bovine animal more than 2 years old;

(*b*) 1.6 bovine animals from 6 months to 2 years old inclusive; or

(*c*) 6.6 sheep or goats;

"pesticide" includes herbicide, fungicide or insecticide;

"rough moorland grazing" means grassland the vegetation of which is comprised wholly or mainly of matt grass, purple moor grass, cotton grasses, wavy hair grass or sedges;

"scrubland" means land which is covered wholly or mainly by stunted trees or brushwood;

"stocking density" means the number of livestock units per hectare of land occupied by the farm business;

"supplementary feeding area" means any land occupied by the farm business (other than a farm building or farmyard) where concentrates, fodder or mineral licks are fed to livestock;

"unimproved grassland" means grassland on which less than 20% of the sward is comprised of ryegrass, timothy, red fescue or white clover;

"wetland" or "marsh" means any ground which is normally saturated with water;

"wet pasture" means grassland the soil of which is normally saturated with water and is liable to seasonal flooding;

"wildlife corridor" shall be construed in accordance with paragraph 1 of Part III of Schedule 3.

"woodland" means woodland which is comprised wholly or mainly of broadleaved species.

Designation of environmentally sensitive area

3. The Department hereby designates as an environmentally sensitive area that area of land in County Fermanagh which is shown coloured green on the map marked "Map of West Fermanagh and Erne Lakeland Environmentally Sensitive Area" dated 30th March 1993 signed and sealed by the Secretary of the Department and deposited at the offices of the Department at Dundonald House, Upper Newtownards Road, Belfast BT4 3SB.

Requirements and provisions of agreement

4. As regards land which is the subject of an agreement, such an agreement shall include the relevant requirements specified in Schedules 1 and 2 as to agricultural practices, methods and operations and the installation and use of equipment and may also include one or more of the relevant provisions specified in Schedule 3.

Breach of requirements or provisions

5. An agreement shall include provisions that—

(*a*) in the event of a breach by the farmer of any of the relevant requirements or provisions referred to in Article 4, then the Department may give the farmer notice in writing terminating the agreement forthwith and may recover from the farmer as a civil debt an amount equivalent to the whole or any part of the payments made to him by the Department under the agreement; and

(*b*) any question arising under an agreement as to whether there has been a breach of any of the relevant requirements or provisions referred to in Article 4 shall be referred to and determined by a single arbitrator to be agreed between the parties or in default of such agreement to be appointed by the Chairman for the time being of the Northern Ireland Branch of the Royal Institution of Chartered Surveyors and in accordance with the provisions of the Arbitration Act (Northern Ireland) 1937(**a**) or any statutory modification or re-enactment thereof for the time being in force.

Rates of payment

6.—(1) Subject to paragraph (2), where an agreement relates to any land to which the requirements of Schedule 1 apply the Department shall make payments for each hectare of such land as follows:

(*a*) If the land is unimproved grassland at the rate of £45 per annum.

(*b*) If the land is improved land at the rate of £30 per annum.

(*c*) If the land is rough moorland grazing at the rate of £10 per annum.

(a) 1937 c. 8 (N.I.)

(2) Where an agreement relates to any land specified in column 1 of the Table the Department shall make payments for each hectare of such land at the rates per annum set out in the corresponding entry opposite thereto in column 2 of the said Table.

TABLE

(1)	(2) *£ for each hectare of land per annum*
Hay meadow	110
Wet Pasture	110
Limestone Grassland	90
Woodland or Scrubland	70
Heather Moorland	50
Building or object of archaeological architectural or historic interest	80 (for each 0.25 hectare)

(3) Where an agreement relates to any hay meadow to which Part I of Schedule 3 applies, the Department shall in addition to the payments specified in the first entry in column 1 of the Table to paragraph (2), make payments for each hectare of such hay meadow at the rate of £30 per annum.

(4) This Article shall have effect subject to the provisions of Article 7.

7.—(1) Subject to paragraph (2), where an agreement relates to any grassland to which Part II of Schedule 3 applies the Department shall make payments for each hectare of such grassland at the rate of £60 per annum.

(2) Where an agreement relates to any land to which Part III of Schedule 3 applies, the Department shall make payments for each hectare of such land as follows:

(*a*) If the land is unimproved grassland at the rate of £100 per annum.

(*b*) If the land is improved land at the rate of £200 per annum.

(*c*) If the land is rough moorland grazing at the rate of £50 per annum.

Rates of payments under enhancement provisions

8.—(1) Subject to paragraph (2), where an agreement relates to any land to which Part IV of Schedule 3 applies, the Department shall, in addition to any payments made under Article 6 or 7, make payments according to the operations which have been carried out under the provisions of that Part.

(2) Payments made by virtue of this Article shall not exceed:

(*a*) £100 per annum for each hectare of land to which that agreement relates; or

(*b*) £2,000 in any year,

whichever is the lesser.

Sealed with the Official Seal of the Department of Agriculture on 5th April 1993.

(L.S.) *L. Sinclair*
Assistant Secretary

The Department of Finance and Personnel hereby consents to the foregoing Order.

Sealed with the Official Seal of the Department of Finance and Personnel on 5th April 1993.

(L.S.) *J. H. Caldwell*
Assistant Secretary

SCHEDULE 1 Articles 4 and 6(1)

Requirements to be included in an agreement

1. As regards all land which is the subject of an agreement, the farmer shall prepare and agree with the Department a farm conservation plan which shall identify any conservation features relevant to the requirements of paragraphs 2 to 21 and Schedule 2 and which may also include one or more of the additional conservation provisions specified in Schedule 3.

2. The farmer shall not increase the stocking density on lands owned or occupied by him for the purpose of his farm business to a level above that which existed on average during the period between 1st January 1992 and 31st December 1992, both dates inclusive.

3. The farmer shall not increase any existing rate of application of organic fertiliser, inorganic fertiliser or any mixture thereof.

4. The farmer shall not carry out any land reclamation work.

5. The farmer shall not install new underdrainage or substantially modify existing drainage systems.

6. The farmer shall not undertake ploughing, levelling or reseeding of unimproved grassland or of land not previously cultivated.

7. The farmer shall not apply lime to rough moorland grazing.

8. The farmer shall not undertake any form of cultivation including chain harrowing or rolling during the period between 1st April and 30th June, both dates inclusive, in any year except on grassland intended to be cut for the purpose of making silage in that year.

9. The farmer shall not:

(*a*) undertake any tree planting;

(*b*) undertake the construction or reconstruction of any farm road;

(*c*) undertake the construction of any new farm building;

(*d*) carry out any major repair or renovation work to any existing farm building;

(*e*) apply fungicides or insecticides to agricultural land, other than improved land; or

(*f*) apply any pesticides to the bottoms of field boundaries;

except with the prior written permission of the Department.

10. The farmer shall not apply herbicides except to control nettles, spear thistle, creeping thistle, field thistle, curled dock, broadleaved dock, ragwort or bracken. Except on improved land or for the purpose of controlling bracken, herbicides used for the purposes of this paragraph shall be applied only by spot treatment or weed wiper.

11. The farmer shall ensure that no pollution occurs due to the escape of silage effluent, sheep dip or other pollutant.

12. The farmer shall not deposit on or extract from any land any article, material or substance in a manner likely to significantly detract from the natural beauty or damage or destroy the flora or fauna or materially alter the geological or physiographical features of such land.

13. The farmer shall control rushes, bracken or scrub (including European gorse) only in accordance with the written advice of the Department.

14. The farmer shall maintain open drains and sheughs only in accordance with the written advice of the Department.

15. The farmer shall retain existing ponds, rivers, streams, sheughs, wetland, marsh, iris beds, reed beds and associated fringe vegetation.

16. The farmer shall retain existing hay meadows, heather moorland, limestone grassland, wet pasture, trees, woodland and scrubland.

17. The farmer shall retain existing field boundaries and shall not remove any hedge, bank. ditch, dyke or wall or any part thereof, except with the prior written permission of the Department; and shall maintain hedges only in accordance with the written advice of the Department.

18. The farmer shall retain and maintain stockproof walls using traditional materials.

19. Where any farm building is constructed wholly or partly of traditional materials the farmer shall maintain any such building in a weatherproof condition using only such traditional materials as are appropriate.

20. The farmer shall obtain the written advice of the Department before commencing the painting of any new or existing farm building.

21. The farmer shall retain and maintain traditional gates and gate posts.

Additional Requirements

PART I

As regards any existing HAY MEADOW which is the subject of an agreement, the farmer shall comply with all the relevant requirements of Schedule 1 and in addition thereto:—

1. The farmer shall not cut any grass therefrom earlier than 1st July in any year.

2. The farmer shall ensure that the aftermath is grazed with livestock and that such grazing does not continue later than 31st October in any year.

3. The farmer shall ensure that the rate of application of inorganic fertiliser, organic fertiliser or any mixture of these does not exceed 25 kilogrammes of Nitrogen, 13 kilogrammes of Potash and 13 kilogrammes of Phosphate per hectare in any year.

4. The farmer shall not apply lime except with the prior written permission of the Department.

PART II

As regards any WET PASTURE which is the subject of an agreement the farmer shall comply with all the relevant requirements of Schedule 1 and in addition thereto:—

1. The farmer shall not permit grazing with livestock during the period between 1st January and 31st May, both dates inclusive, in any year and shall ensure that during any other part of that year any such pasture is grazed so as to avoid poaching, overgrazing or undergrazing.

2. Where water levels in sheughs are within his control, the farmer shall maintain those levels as close as possible to bank level during the period between 1st March and 15th June, both dates inclusive, in any year.

3. The farmer shall ensure that the rate of application of inorganic fertiliser, organic fertiliser or any mixture of these does not exceed 25 kilogrammes of Nitrogen, 13 kilogrammes of Potash and 13 kilogrammes of Phosphate per hectare in any year.

4. The farmer shall not apply lime except with the prior written permission of the Department.

PART III

As regards any LIMESTONE GRASSLAND which is the subject of an agreement the farmer shall comply with all the relevant requirements of Schedule 1 and in addition thereto:—

1. The farmer shall ensure that such grassland is grazed with livestock so as to avoid overgrazing or undergrazing.

2. The farmer shall locate any supplementary feeding area only in accordance with the written advice of the Department.

3. The farmer shall not apply any organic fertiliser, inorganic fertiliser or lime.

PART IV

As regards any existing area of WOODLAND or SCRUBLAND which is the subject of an agreement:—

1. The farmer shall retain such an area.

2. The farmer shall exclude therefrom livestock or feral goats.

3. The farmer shall, within 12 months from the commencement of the agreement obtain the written advice of the Department on the preparation of a management plan in respect of any such area of woodland or scrubland.

PART V

As regards any HEATHER MOORLAND which is the subject of an agreement the farmer shall comply with all the relevant requirements of Schedule 1 and in addition thereto:—

1. The farmer shall not apply any organic fertiliser, inorganic fertiliser or lime.

2. The farmer shall not permit any grazing with livestock during the period from 1st November in any year to 28th February in the following year, both dates inclusive, and during any other period shall not permit such grazing at a stocking density exceeding 0.3 livestock units per hectare.

3. The farmer shall ensure that any supplementary feeding area is located at an appropriate distance from any area of existing heather.

4. The farmer shall obtain the written advice of the Department on heather regeneration.

5. The farmer shall not permit the burning of any heather except with the prior written permission of the Department.

PART VI

As regards any building or other object of archaeological, architectural or historic interest on land which is the subject of an agreement:—

1. The farmer shall ensure that the boundaries of any such building or object are identified and marked on a farm map.

2. The farmer shall not undertake any form of cultivation or plant any trees within a minimum of 10 metres of the boundaries of any such building or object.

3. The farmer shall manage scrub or trees within the boundaries of any such building or object so as to reduce root damage and shall where appropriate cut timber to ground level so as to allow any roots to remain undisturbed.

4. The farmer shall, as necessary, exclude livestock from any such building or object.

5. The farmer shall not cause or permit any operation to be carried on in a manner likely to damage or destroy any such building or object.

6. The farmer shall not place feeding or drinking troughs or locate any supplementary feeding area within the boundaries of any such building or object.

Additional Conservation Provisions

Part I

As regards any existing HAY MEADOW which is subject of an agreement:—

1. Subject to paragraph 2, the farmer shall not cut any grass therefrom earlier than 16th July in any year.

2. The farmer shall not cut any grass therefrom earlier than 1st August during one year which falls within the period of five years commencing with the date of that agreement.

3. The farmer shall ensure that the aftermath is grazed with livestock and that such grazing does not continue later than 31st October in any year.

4. The farmer shall not apply any organic fertiliser or inorganic fertiliser.

5. The farmer shall not apply lime except with the prior written permission of the Department.

Part II

As regards any grassland which is the subject of an agreement and which is used for overwintering by whooper swans or Greenland white fronted geese:—

1. The farmer shall ensure that such grassland remains available for that purpose.

2. The farmer shall obtain the written advice of the Department on the management of such grassland.

Part III

As regards any land which is the subject of an agreement:—

1. The farmer shall set aside such areas of land as may be agreed with the Department for the purpose of conserving the flora and fauna (hereinafter called "wildlife corridors").

2. The farmer shall retain such wildlife corridors at such locations as may be agreed with the Department.

3. The farmer shall exclude livestock from such wildlife corridors.

4. The farmer shall not undertake any form of cultivation within such wildlife corridors except where that cultivation is for the benefit of wildlife.

5. The farmer shall obtain the written advice of the Department on the management of such wildlife corridors.

Enhancement Provisions

PART IV

As regards any land which is the subject of an agreement the farmer may agree with the Department that he will carry out or cause to be carried out one or more of the following operations:—

1. The restoration of stock-proof dry stone walls.
2. The provision or restoration of traditional gates or gate posts.
3. The renovation of traditional farm buildings.
4. The provision of protective fencing.
5. The regeneration of hedges.
6. The planting of trees.
7. The control of bracken.
8. The regeneration of heather.
9. The construction of water level penning structures such as bunds, sluices, culverts or other works to control water levels.
10. The creation of reed beds.

EXPLANATORY NOTE

(This note is not part of the Order.)

Article 3(1) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987 (''the 1987 Order'') gives the Department of Agriculture (''the Department'') power to designate an area in Northern Ireland as an environmentally sensitive area where it appears to the Department particularly desirable to conserve, protect or enhance environmental features in that area by the maintenance or adoption of particular agricultural methods.

Article 3(2) of the 1987 Order enables the Department to enter into a management agreement with any person entitled to an estate specified in Article 3(6) of the 1987 Order in agricultural land in a designated area if the Department considers that conservation of environmental features in that area may be thereby facilitated.

This Order designates an area in County Fermanagh as an environmentally sensitive area (Article 3). The area is defined by reference to a map which is available for inspection during normal office hours at the offices of the Department at Dundonald House, Upper Newtownards Road, Belfast BT4 3SB. Copy maps are also available for inspection during normal office hours at the County Agricultural Development Office, Inishkeen House, Killyhevlin, Enniskillen, Co. Fermanagh.

This Order specifies requirements as to agricultural practices, methods and operations and the installation and use of equipment which must be included in such an agreement. An agreement may also include certain additional conservation provisions and enhancement provisions (Article 4 and the Schedules).

This Order also contains provisions for recovery of sums paid by the Department under such an agreement in the event of a breach of the specified requirements or provisions and for the determination by arbitration of any question as to whether a breach of those requirements has occurred (Article 5).

The rates of payment to be made by the Department under an agreement are set out (Articles 6 and 7). Higher rates of payment are applicable where an agreement contains certain additional conservation provisions set out in Schedule 3.

Where an agreement includes enhancement provisions set out in Part IV of Schedule 3, then the maximum levels of payments which may be made by the Department under such enhancement provisions are set out in Article 8.