

Motion of Regret: The Heather and Grass etc. Burning (England) Regulations 2021

Policy briefing ahead of House of Lords debate on 18.03.21

The Heather and Grass Burning Regulations were laid as a Statutory Instrument (SI) before the House on 16 February. The full text of the Statutory Instrument (SI) can be found [here](#).

On 11 March the Secondary Legislation Scrutiny Committee drew the SI to the attention of the House, on the grounds that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House. The Committee's statement can be found [here](#).

On 12 March Baroness Jones of Whitchurch's [motion of regret](#) concerning the SI was scheduled for debate. The debate will take place on 18 March.

Background

England contains around 355,000 hectares (ha) of upland deep peatland habitat (also known as blanket bog but referred to as upland peat in the remainder of this briefing), with a particular concentration of the habitat being found in the Pennines.¹

These high value upland peat habitats are subject to rotational burning. This practice sees vegetation on top of peat set alight at regular intervals, in order to create better conditions for the rearing of grouse for the shooting industry.

Upland peat habitats are a significant carbon store² and burning heather and grass within them releases carbon. Natural England has calculated that around 260,000 tonnes of CO₂ are released every year from rotational burning on peat in England.³ Rotational burning also reduces the biodiversity value of upland peat habitats, and affects water quality.⁴

In January 2021 the Government announced the introduction of a partial ban of burning heather and grass on peatland, in recognition of the 'consensus that burning of vegetation on blanket bog is damaging to peatland formation and habitat condition'.⁵ The Heather and Grass Burning Regulations 2021 were introduced as an SI to put this partial ban into law.

Points to raise

- 1) The SI as introduced will imperfectly achieve its policy objectives

Two weaknesses will prevent the SI from achieving its policy objective of protecting upland peat habitats from the impact of burning.

¹ <http://publications.naturalengland.org.uk/publication/30021>

² https://www.theccc.org.uk/wp-content/uploads/2013/07/ASC-2013-Chap4_singles_2.pdf

³ <http://publications.naturalengland.org.uk/publication/30021>

⁴ <https://www.wildlifetrusts.org/what-we-do/natural-solutions-climate-change/peatland-solutions>

⁵ <https://www.gov.uk/government/news/englands-national-rainforests-to-be-protected-by-new-rules>

i) *The SI is flawed by limited scope*

The SI only partially prohibits burning and only on designated sites only. The regulations state that only sites that are both in a Site of Special Scientific Interest and in a Special Area of Conservation or a Special Protection Area can be considered as designated sites for the purposes of the regulations. Link has estimated that 109,043 ha of English upland peat meet these specifications, out of a total of 355,000 ha⁶. Defra has since suggested, in response to an earlier Link briefing, that coverage is slightly higher, at 142,000 ha.⁷ Even so, significantly less than half of upland peat is covered by the regulations.

In the same response, Defra also suggests that the amount of upland peat in England stands only at 230,000 ha. However, this figure just covers upland peat that is on the Biodiversity Action Plan (BAP) priority habitat list. Upland peat that is not on the BAP list is still precious and should not be burnt. As confirmed by Natural England, there are a total 355,000 ha of upland peat in England. This is the figure that should be used.

In drawing the attention of the House to the SI, the Secondary Legislation Scrutiny Committee criticised Defra's use of figures on upland peat, saying:

*'The Department should have been clearer about the actual size of the areas covered by the ban and the peatlands currently subject to rotational burning as well as those areas where consent to burn has already been removed: the mix of percentages, hectares and other metrics and the use of different reference points, such as "protected blanket bog habitat", "peatlands" or "upland deep peat", are a source of confusion and make it difficult to assess the extent and impact of the ban on unlicensed rotational burning.'*⁸

In fact, only a minority of upland peat in England (142,000 ha out of 355,000 ha, so 40%) will be covered by the regulation. 60% of upland peat is excluded from the regulation as it is outside the specification for a designated site.

This limited scope will hinder the effectiveness of the regulation. For the best climate and ecological results, all upland peat should be included in the ban. At the very least, a simple improvement would be to change the specification for designation to a site being in an SSSI **or** a SAC or SPI to widen the scope and increase proportion of upland peatland protected by the ban.

ii) *The SI is undermined by loosely worded exemptions*

As well as direct exemptions from the rules, Regulation 4 gives the Secretary of State the power to grant a license to permit burning in a designated site covered by the ban on any of the following grounds:

(a) for the conservation, enhancement or management of the natural environment for the benefit of present and future generations;

⁶ 104,241ha in SACs and 4,802 ha in Bowland SPA – RSPB calculations from JNCC data

⁷ <https://committees.parliament.uk/publications/4911/documents/50015/default/>

⁸ <https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/242/24203.htm>

- (b) for the safety of any person;
- (c) to reduce the risk of wildfire; or
- (d) because the specified vegetation is inaccessible to mechanical cutting equipment and any other method of management is impracticable.

These wide-ranging powers given to the Secretary of State mean that even in the 40% of upland peat habits covered by the regulation, the protection offered can be revoked by a licence. The SI contains very little detail on the licensing processes and does not specify a standard of evidence that a licence application must meet to be successful. The absence of such detail risks leaving extensive loopholes that will enable continued burning in protected areas.

In response to our earlier briefing on the SI, Defra suggested that the detail of how the regulation would be administered would be set out in new guidance, to be published later in 2021.

In drawing the attention of the House to the SI, the Secondary Legislation Scrutiny Committee criticised Defra's reliance on guidance for the provision of crucial policy detail, saying:

*'We have previously criticised a blurring of the distinction between guidance and legislation and have raised this with the Leader of the House of Commons who told us that "as a general principle, legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation". We acknowledge that the licensing of rotational burning on protected blanket bog is site specific and involves complex assessments, but the House may wish to press the Minister further about Defra's explanation that including detail in relation to the evidence that will be required for the Secretary of State to grant a licence for burning in the instrument would have restricted the Department's ability to respond quickly to changes in the scientific and environmental consensus. This raises questions about the extent of the Secretary of State's discretion in the decision-making process, in the absence of the guidance which is yet to be published and which the Committee was therefore unable to scrutinise. We also draw to the attention of the House our concern that the timetable appears to be very tight: the Department intends to consult with key stakeholders on the new guidance which needs to be in place before licensing applications can be made ahead of the start of the burning season on 1 October.'*⁹

We recommend the swift provision of tightly worded further detail on how the licensing will be administered. Such detail should include requirements to meet a tight definition of inaccessibility, to provide evidenced support from the local fire authority for wildfire prevention burning, and to provide evidenced support from Natural England for conservation burning in any license application made on such grounds.

We also propose that the licence scheme recognise that there are very limited circumstances in which burning on upland peat is appropriate. We welcome early recognition of this in Defra's response to Link's earlier SI briefing, which lists only two appropriate uses of burning on upland peat. The response states:

⁹ <https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/242/24203.htm>

*'There is an established scientific consensus that burning of vegetation on such sites is damaging...In developing these regulations, the Government has sought to recognise that burning, in strictly limited circumstances, can represent an effective and legitimate approach when used as part of a cohesive restoration or wildfire management plan.'*¹⁰

In line with this analysis, exemptions from the prohibition of burning in protected areas should only apply when burning can be shown to be part of either a restoration plan or wildfire management plan.

2) The SI's weaknesses undermine the Government's advocacy for nature-based solutions to climate change

The rotational burning season this year coincides with the UK's hosting of the global climate conference, COP26, which will see the Government champion nature-based solutions to climate change. In the words of Environment Minister Lord Goldsmith: 'the UK will use our Presidency of COP26 to persuade other countries to put nature at the heart of their climate response'.¹¹

This advocacy will be undermined if it takes places against a backdrop of burning on our peatland habitat. The UK cannot be a champion of nature-based solutions to climate change whilst simultaneously allowing our biggest domestic natural carbon store to be burned.

3) There is strong public support for a more comprehensive ban

Link has commissioned You Gov polling to gauge public interest in and views on rotational burning and upland peat. The results are clear:

- 60% of the British public want to see the Government's peat burning ban expanded to cover all peatland at risk of being burned, with only 3% opposed.¹²
- 56% also want a ban on the burning of all at risk peatland in Scotland, Wales and Northern Ireland.
- Two-thirds of people asked want promises to protect peatland included in UK pledges for COP26
- 67% want the government to ensure our natural carbon stores, like peatlands, are healthy and capture as much carbon as possible.

The public recognise the importance of upland peat, wish to see its potential as a nature-based solution to climate change realised and support a comprehensive burning ban to deliver this.

Q&A

The game bird industry has a financial stake in the perpetuation of rotational burning, as it is a practice that increases breeding success amongst gamebird populations.¹³ A number of claims have been

¹⁰ <https://committees.parliament.uk/publications/4911/documents/50015/default/>

¹¹ <https://www.telegraph.co.uk/news/2020/09/27/britain-will-use-financial-diplomatic-power-help-save-planet/>

¹² <https://www.wcl.org.uk/weak-ban-could-leave-englands-peatland-burning.asp>

¹³ <https://bioone.org/journals/wildlife-biology/volume-2017/issue-SP1/wlb.00227/Does-rotational-heather-burning-increase-red-grouse-abundance-and-breeding/10.2981/wlb.00227.full>

advanced to suggest that even the partial and imperfect ban advanced by the SI goes too far. Link responds to each claim below.

Rotational burning burns heather, not peat. What's the problem?

Whilst the aim of rotational burning is to remove heather, fire is a destructive and carbon-releasing activity which affects every part of the upland peat habitat, leading to an overall increase in carbon emitted. A landmark rotational burning study conducted by Garrett et al in 2000 compared burnt and unburnt upland peat habitats in the Pennines over decades and found 'after 30 years there was significantly less C (carbon) stored in the blanket peat in plots which had been burned every ten years'.¹⁴ A recent study of a wildfire on upland peat in North East Scotland demonstrated the destructive impact that burning vegetation has on carbon storage in upland peat habitats — this one wildfire emitted carbon equivalent to 6.2 days of 2017 daily average greenhouse gas emissions in Scotland.¹⁵ This accumulation of evidence has led Natural England to their calculation that 260,000 tonnes of CO₂ are released every year from rotational burning on upland peat habitat in England.

Doesn't rotational burning provoke the growth of carbon capturing mosses such as sphagnum?

A 2018 paper from Noble et al, drawing on decades of data, suggests a nuanced picture. The paper concluded that 'in some cases fire has a negative impact on sphagnum, and this can persist for several decades'.¹⁶ The paper did find that repeat burning could, along with other circumstances like a change in pollution levels, help damaged sphagnum recover from the impact of the original burning. Burning's possible role under certain circumstances as a partial mitigation agent should not obscure its proven role as a cause of sphagnum loss. The partial mitigation role could also be more effectively delivered by habitat restoration.

Isn't it the case that management of upland peat for game birds provides a net gain for carbon storage, due to industry-led restoration work?

Whilst this restoration work is welcome, its scale compares poorly with the scale of rotational burning. We understand that the game bird industry has restored around 8,000 hectares of upland peat habitat in England. This compares to 27,660 hectares of upland peat habitat burning, observed by a 2015 study by Douglas et al.¹⁷ The overall amount of land burnt is likely to be even larger than that, as the 27,660 hectares only relates burning in SSSI, SAC or SPA sites. A ratio of over 3 hectares burnt for every hectare restored does not represent a net positive for upland peat habitats.

For questions or further information please contact:

Matt Browne, Advocacy Lead, Wildlife and Countryside Link E: matt@wcl.org.uk

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 58 organisations to use their strong joint voice for the protection of nature

¹⁴ https://www.researchgate.net/publication/29813355_Effects_of_burning_and_grazing_on_carbon_sequestration_in_a_Pennine_blanket_bogUK

¹⁵ <https://www.wwf.org.uk/sites/default/files/2019-11/Carbon%20loss%20and%20economic%20impacts%20of%20a%20peatland%20wildfire%20in%20north-east%20Sutherland.pdf>

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6211700/>

¹⁷ <https://muirburncode.org.uk/wp-content/uploads/2016/08/Douglas-et-al-Burning-for-Game-Management-2015-1.pdf>