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STATUTORY INSTRUMENTS

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**2021 No. 158**

**AGRICULTURE, ENGLAND**

**HILL LANDS**

**The Heather and Grass etc. Burning (England) Regulations 2021**

<i>Made</i>	- - - -	<i>15th February 2021</i>
<i>Laid before Parliament</i>		<i>16th February 2021</i>
<i>Coming into force</i>	- -	<i>1st May 2021</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 20(1) of the Hill Farming Act 1946<sup>(1)</sup>.

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Heather and Grass etc. Burning (England) Regulations 2021 and come into force on 1st May 2021.

(2) These Regulations apply to England only.

**Interpretation**

2. In these Regulations—

“burning season” means—

- (a) in relation to land which is within an upland area, the period from 1st October in one year to 15th April in the following year, both dates inclusive; and
- (b) in relation to land which is not within an upland area, the period from 1st November in one year to 31st March in the following year, both dates inclusive;

“designated site” means a site that is a—

- (a) European site within the meaning given by regulation 8(1) of the Conservation of Habitats and Species Regulations 2017<sup>(2)</sup>; and
- (b) site of special scientific interest within the meaning of section 52(1) of the Wildlife and Countryside Act 1981<sup>(3)</sup>;

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(1) 1946 c. 73. Section 20(1) was amended by section 1 of the Hill Farming Act 1985 (c. 32) and S.I. 1955/554. The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by virtue of S.I. 2002/794.

(2) S.I. 2017/1012, amended by S.I. 2019/579; there is another amending instrument but it is not relevant.

(3) 1981 c.69. The definition of “site of special scientific interest” was inserted by paragraph 5(2) of Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37).

“specified vegetation” means heather, rough grass, bracken, gorse or vaccinium;

“upland area” means all the land shown coloured pink on the map marked as “Map of Upland Area in England” held by the Department for Environment, Food and Rural Affairs but does not include the land coloured pink in the Isles of Scilly<sup>(4)</sup>.

### **Prohibition of burning on peat over 40cm deep except under licence**

3.—(1) Unless paragraph (2) or (3) applies, a person must not burn specified vegetation on a designated site on peat that is of a depth of more than 40 centimetres, except under (and in accordance with) a licence issued by the Secretary of State under regulation 4.

(2) The prohibition in paragraph (1) does not apply if the area of specified vegetation to be burned in one burning season is an area —

- (a) which has a slope of more than 35 degrees; or
- (b) where more than half of that area is covered by exposed rock or scree,

and in either case—

- (i) is a single area of 0.5 hectares or less, or
- (ii) is on two or more areas within 5 metres of each other with a combined area of 0.5 hectares or less.

(3) The prohibition in paragraph (1) does not apply where land is cultivated as a private or allotment garden.

### **Licensing of burning**

4.—(1) A person may apply to the Secretary of State for a licence permitting the burning of specified vegetation in a manner otherwise prohibited by regulation 3(1).

(2) Any application must be made in a manner specified by the Secretary of State and an application may be made in relation to burns in more than one burning season or calendar year.

(3) Any application must be made not less than 28 days before the date (or the first date if more than one) on which the applicant proposes to burn and —

- (a) in the case of a burn (or burns) intended to take place during the burning season, not before the end of the burning season preceding the first burn; or
- (b) in the case of a burn (or burns) intended to take place outside the burning season, not more than 56 days before the date (or the first date if more than one) on which the applicant proposes to burn.

(4) The Secretary of State may grant a licence where it is expedient or necessary—

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

(5) If the Secretary of State—

- (a) refuses to issue a licence under paragraph (1);
- (b) issues a licence in respect of only part of the land to which the application relates; or

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(4) The map may be inspected upon application to the Department for Environment, Food and Rural Affairs at 2 Marsham Street, London, SW1P 4DF.

(c) issues a licence subject to any conditions,  
the Secretary of State must give notice in writing to the applicant of the reasons for that decision.

(6) Where a licence has been granted for burns in more than one burning season or for burns outside the burning season in more than one calendar year, the Secretary of State may amend or revoke that licence, where the Secretary of State considers it appropriate, and must give notice in writing to the applicant of the reasons for that decision.

### **Regulation of burning**

5. Where a licence is granted under regulation 4, or where regulation 3(2) applies, a person must not—

- (a) commence any burning between sunset and sunrise;
- (b) carry out any burning unless—
  - (i) there are, where the burning is taking place, sufficient persons and equipment to control and regulate the burning during the entire period of the burning activity, and
  - (ii) before starting to burn and during the entire period of the burning activity, all reasonable precautions are taken to prevent injury, or damage to any adjacent land, or to any person or thing on that land; and
- (c) leave soil smouldering, where that is connected to the burning activity, for more than 48 hours, unless permitted to do so by the licence.

### **Burning notices**

6.—(1) If Natural England believes that specified vegetation has been burnt in contravention of these Regulations, it may serve a notice (a “burning notice”) on the occupier of the land concerned requiring that person to notify Natural England, in the manner specified by Natural England in the burning notice, of any proposed burning of any specified vegetation on any land occupied by that person beginning with the date on which it is served.

(2) A burning notice may only apply for a period of two years or less, beginning with the day on which it is served.

### **Representations against burning notices**

7.—(1) A person served with a burning notice may make representations against that notice to a person appointed for the purpose by the Secretary of State.

(2) Any such representations must be made within 28 days beginning with the day on which the burning notice is issued.

(3) The appointed person must consider the representations and report in writing to the Secretary of State.

(4) The Secretary of State must give written notice of the final determination and the reasons for it.

(5) Where a person makes representations against a burning notice, the burning notice has effect until it is revoked by the Secretary of State, withdrawn by Natural England or its period expires.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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15th February 2021

Rebecca Pow  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prohibit a person from burning any specified vegetation on areas of peat over 40 centimetres deep in a site of special scientific interest that is also a European site, unless an exception applies, or the burning is carried out under, and in accordance with, a licence issued by the Secretary of State. A burning notice may be issued under regulation 6 if Natural England believes that specified vegetation is being burned in contravention of these Regulations. Regulation 7 makes provision for a right to make representations to a person appointed by the Secretary of State if Natural England serves a burning notice on any person.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.