

EXPLANATORY MEMORANDUM TO

THE HEATHER AND GRASS ETC. BURNING (ENGLAND) REGULATIONS 2021

2021 No. 158

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument bans the burning, without a licence, of specified vegetation on peat over 40 centimetres in depth in a Site of Special Scientific Interest (“SSSI”) that is also a Special Area of Conservation (and/or a Special Protection Area¹). The purpose is to prevent further damage by burning to ~142,000 ha of protected blanket bog habitat. This instrument is not intended to regulate accidental fires of the type and nature caused by military training.
- 2.2 This instrument sets out the circumstances in which the Secretary of State, who is the licensing authority, may grant a licence for burning. This includes where the proposed burning is necessary or expedient for the purpose of reducing wildfire risk.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This instrument is subject to negative resolution procedure. There are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Heather and Grass etc. (Burning) Regulations 2007, also made under section 20(1) of the Hill Farming Act 1946, govern the burning of heather, rough grass,

¹ The SI refers to European sites as that is the relevant defined term in legislation, specifically regulation 8 of the Conservation of Habitats and Species Regulation 2017

bracken, gorse and vaccinium in a number of circumstances. These 2021 regulations add to the prohibitions on burning specified vegetation set out in the 2007 regulations, prohibiting burning activities specifically on deep peat (over 40 cm depth), except where under (and in accordance with) a licence issued by the Secretary of State. Regulation 3 of these regulations sets out the activity that is prohibited and where this does not apply.

- 6.2 Blanket bog is a threatened upland peat habitat. Under the Conservation of Habitats and Species Regulations 2017 (“Conservation Regulations”) the government has responsibility for protecting this habitat type, which is a priority habitat in its active form, and restoring it to favourable conservation status.
- 6.3 The government recognises that, by allowing repeated burning on blanket bog sites in England it was not fulfilling its obligations under the Conservation Regulations. This instrument has been drafted in order to ensure compliance with those domestic obligations, as well as international obligations under the Bern Convention on the Conservation of European Wildlife and Natural Habitats. Specifically, by requiring that any burning on blanket bog in a SSSI that is also a Special Area of Conservation and Special Protection Area will be subject to licensing by the Secretary of State. Any decision to licence will need to comply with the Conservation Regulations.

7. Policy background

What is being done and why?

- 7.1 The government’s ambition is to have healthy peatlands, which provide a wealth of ecosystem services, including carbon storage and sequestration, a haven for wildlife, high quality drinking water and flood mitigation. Blanket bog is of international importance with the UK having 13% of the world’s blanket bog. It makes up around 40% of England’s deep peat reserves and is one of our most extensive protected habitats, yet only ~12% is in a near natural state. The remainder is degraded by practices including burning, and as a result releases carbon to the atmosphere rather than taking it up and storing it.
- 7.2 The government is committed to restoring 35,000ha of England’s peatlands through the Nature for Climate Fund and will be publishing the England Peat Strategy, setting out how we will reverse the decline in our peat, later this year. Peatland restoration will contribute to the government’s targets on nature recovery, and to achieving net zero carbon emissions by 2050, as well as making our peatlands more resilient to the impact of climate change. The government has previously stated that if voluntary measures to cease burning on blanket bog have not worked it will put in place legislation to achieve this. This voluntary approach failed, primarily owing to the reluctance of landowners to adopt more sustainable practices. The result is this instrument, which is needed to protect ~142,000 ha of SSSI designated deep peat from further damage by burning. This equates to 90% of our SSSI designated blanket bog habitat and 40% of our upland deep peat. This instrument will therefore make our peatland restoration, nature recovery and emissions targets more achievable.
- 7.3 Only around a third of protected blanket bog currently has consent for rotational burning, having been granted these consents when the scientific consensus on the effects of burning was less known. This land is held by 124 landowners/managers, the remainder is managed by other methods. The estimated total net increase in cost brought about by this instrument, calculated based on direct engagement with

landowners, would be £0.5 million per year. This represents the cost for landowners with live consents to switch to cutting, rather than burning, on protected deep peat sites.

- 7.4 Since 2017 the government has worked with landowners and land managers to promote alternative management practices to burning, and to achieve a voluntary cessation of rotational burning on protected blanket bog sites. 47% of consents to burn have been removed and approximately half of the remaining consents are in perpetuity. The government has previously stated that if voluntary measures to cease burning on blanket bog did not work it will put in place legislation to achieve this.
- 7.5 These regulations are a crucial step in delivering the aims of the England Peat Strategy and to meet nature recovery and climate change mitigation and adaptation targets.
- 7.6 The regulations set out the circumstances in which the Secretary of State may grant a licence to burn. The evidence and process by which the Secretary of State will make decisions on licence applications will be set out in accompanying guidance. This guidance will be published in sufficient time to enable applications for licenses to be made in advance of the 2021 burning season.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This is not an amending instrument and consolidation is not appropriate.

10. Consultation outcome

- 10.1 All landowners/managers with existing consents to burn on areas of deep peat (over 40cm deep) on SSSIs that are also Special Areas of Conservation and/or Special Protection Areas are aware of the government considering legislation to introduce a ban. Landowners and managers with existing consents were invited to fill out an online survey detailing any possible impacts from the proposed legislation. The survey was sent to all 124 consent holders in July 2019 and was open for a period of 7 weeks. 97 consent holders responded.
- 10.2 Targeted stakeholder engagement was also carried out in August 2019 with 26 key stakeholders in the form of roundtable meetings to discuss possible impacts of introducing a ban. Stakeholders included: environmental organisations, shooting and conservation industry bodies, fire and rescue services, water companies, and representatives from National Parks, Areas of Outstanding National Beauty and major landowning organisations.
- 10.3 In summary, the majority of cited potential positive impacts in consultation responses were the reduction in greenhouse gas emissions as a result of reduced damage to peat and the increase in area for possible peatland restoration. The most cited potential negative impacts were increased wildfire risk if not addressed under the proposed legislation and increased economic cost to landowners/managers.

11. Guidance

- 11.1 Defra will publish new guidance on the use of burning, for the management of protected blanket bog. This will identify where and when burning may be appropriate and under what circumstances it may be licensed. It will also set out the licence application process applicants and the evidence applicants will need to provide if seeking to burn on protected deep peat.
- 11.2 This guidance will build on the Heather and Grass Burning Code 2007 and the Natural England position statement on burning as a tool for restoration. The guidance will be published in sufficient time to enable applications to be made in advance of the 2021 burning season, which commences on the 1st October 2021.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because in line with Better Regulation Framework guidance, the net impact on businesses has been assessed as being below the +/- £5 million equivalent annual net direct cost to business which requires the completion of an Impact Assessment. A Regulatory Triage Assessment has been carried out, and scrutinised within Defra, finding the annual net direct cost to businesses is expected to be £0.5m.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that all impacted businesses are assessed to be small or micro.

14. Monitoring & review

- 14.1 The approach to monitoring the impact of this legislation is by Natural England, using tools such as satellite Earth Observation data, modelled through their 'Moorland Change Map' to identify where cutting and burning is taking place, and ground surveys where non-compliance is suspected.
- 14.2 In addition, regular engagement with landowners and managers to assist in monitoring the impacts of these Regulations will take place.
- 14.3 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Rebecca Pow, the Parliamentary Under Secretary of State for the Environment and Rural Affairs has made the following statement:

“This instrument has no significant annualised net impact on business (greater than +/- £5 million net annualised) and it would not therefore be appropriate to undertake a review given the costs of doing so”.

15. Contact

- 15.1 Lee Lyons at the Department for Environment, Food and Rural Affairs Telephone: 02084152650 or email: Lee.Lyons@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Siôn McGeever, Deputy Director for Land Use, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow, the Parliamentary Under Secretary of State for the Environment and Rural Affairs at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.