EXPLANATORY MEMORANDUM TO

THE HEATHER AND GRASS ETC. BURNING (ENGLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 1000

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Mary Creagh, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Gabrielle Edwards, Deputy Director for Access, Landscape, Peatland and Soils, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Joanna Rawlings & Sophie Fraenkel at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: heatherandgrassburning@defra.gov.uk. Alternatively, the department can be contacted by telephone: 03459 33 55 77.

Part One: Explanation, and context, of the Instrument

What does the legislation do?

4.1 This instrument amends The Heather and Grass etc. Burning (England) Regulations 2021 (2021 Regulations) to prohibit the burning, without a licence, of specified vegetation on peat over 30 centimetres in depth on all land within Less Favoured Areas (LFAs)[1]. The purpose is to protect 676,628 hectares of peatland habitat by preventing further damage from burning.

4.2 This instrument amends the circumstances in which the Secretary of State, who is the licensing authority, may grant a licence for burning. This includes the addition of the conservation, enhancement or management of the historic environment; where the proposed burning is necessary for the purpose of reducing the impact of wildfire; and for research or educational purposes. This instrument is not intended to regulate accidental fires of the type and nature caused by military training.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

[1] LFAs are any area of land shown within the coloured pink and blue on the map marked as "Less Favoured Areas (England)" held by the Department for Environment, Food and Rural Affairs. The map can also be found online within the application guidance, here – https://www.gov.uk/guidance/heather-and-grass-burning-apply-for-a-licence

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The government is committed to expanding nature rich habitats such as peat bogs and wetlands, reflecting its ambition to restore hundreds of thousands of hectares of peat across the country. Wetter, healthy-functioning peatlands provide a wealth of ecosystem services, including acting as a haven for wildlife, supporting high quality drinking water, carbon storage and flood mitigation. Peatland habitat is of huge international importance. 13% of the world's blanket bog is in the UK and makes up around 40% of England's deep peat reserves. It is one of the UK's most extensive protected habitats but 80% of England's peatlands are now degraded and damaged.

5.2 Burning on peatlands is damaging as it affects the hydrology and dries them out. This leads to biodiversity loss, poorer water quality, increased flood risk, and the release of carbon instead of its storage. Burning also emits harmful pollutants like PM2.5, impacting human health, and raises water treatment costs due to contamination of water sources.

5.3 Peatland restoration is critical to the government's ambitions on nature recovery, and to achieving statutory biodiversity targets under the Environment Act 2021 and net zero targets under the Climate Change Act 2008. It is committed to protecting nature-rich habitats, including peatlands, through promoting sustainable land management and restoration practices. This instrument, which extends previous protections for deep peat, is designed to contribute to delivery of the government's peatland restoration, nature recovery and emission reduction targets.

5.4 This will be done by amending the terms of the 2021 Regulations to prohibit the burning, without a licence, of specified vegetation on peat over 30 centimetres in depth on land within LFAs. These amendments significantly expand the area of England covered by this prohibition, increasing the area protected from 246,156 hectares to 676,628 hectares of England's deep peat (based on current figures via the England Peat Map).

5.5 This amendment will protect the entire area of upland deep peat that is potentially subject to burning. It will therefore encourage land managers to use more sustainable methods to manage heather and other vegetation on peat, such as the restoration of blanket bog.

5.6 This instrument also amends the 2021 Regulations to:

- Amend licensing ground (a) for the conservation, enhancement or management of the natural or historic environment for the benefit of present and future generations - broadening the ground to cover archaeological issues.
- Amend licensing ground (c) to reduce the impact, rather than risk, of wildfire.
- Remove previous ground (d) as a ground to apply for a licence under the Regulations due to the area being inaccessible to mechanical cutting equipment and any other method of management being impracticable.
- Add a new ground (e) for a ground to apply for a licence under the Regulations for research or education purposes.

5.7 The estimated total net increase in cost brought about by this instrument is £1.3 million per year.

5.8 The evidence and process by which the Secretary of State will make decisions on licence applications is set out in accompanying guidance[2].

What was the previous policy, how is this different?

5.9 The 2021 Regulations prohibited burning vegetation on Sites of Special Scientific Interest (SSSIs) that are also Special Areas of Conservation (SACs) or Special Protection Areas (SPAs) if the peat depth exceeded 40cm.

5.10 When introduced they were a significant step in protecting vulnerable peatland habitats from the damaging practice of moorland burning. However, using protected sites as the designated boundaries for the 2021 Regulations left substantial areas of deep peat unprotected. The amendments brought forward by this instrument extends the protections to encompass all areas of upland peat where intensive burning is known to occur.

5.11 Lowering the regulatory threshold to include peat deeper than 30cm also increases the amount of peat being protected from further damage, making it more likely to be able to deliver the significant environmental benefits that healthy peatlands offer.

6. Legislative and Legal Context

How has the law changed?

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, bracken, gorse and vaccinium in a number of circumstances. The Heather and Grass etc. Burning (England) Regulations 2021, add to the prohibitions on burning specified vegetation set out in the 2007 Regulations. This instrument amends the 2021 Regulations, prohibiting burning activities specifically on deep peat (over 30cm depth), except where under (and in accordance with) a licence issued by the Secretary of State. Regulation 3 of the 2021 Regulations sets out the activity that is prohibited and where this does not apply.

6.2 This instrument has been drafted in order to ensure compliance with the government's domestic and international obligations to protect peatlands, for example under the Conservation of Habitats and Species Regulations 2017 where the government has a responsibility to protect peatlands as priority habitats. It will also help to meet Environment Act biodiversity targets and to reduce carbon emissions by enabling these habitats to be moved to a more favourable condition. Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation on potential amendments to the Heather and Grass etc. Burning (England) Regulations 2021 ran between 31 March and 25 May 2025.

7.2 The consultation was published on the online digital platform Citizen Space which recorded responses through an online questionnaire. Responses were also received via email, some of which were identified as part of organised campaigns. 1,743 responses

[2] https://www.gov.uk/government/publications/apply-for-a-licence-to-burn-on-peat-deeper-than-30cm

were received via Citizen Space and 118 responses via email. The majority of responses were from members of the public.

7.3 There was broad support for the proposals amongst consultation respondents. Proponents of the amendments emphasised the importance of protecting peatlands and the ecosystem services they provide. A minority of respondents opposed the proposals, primarily those who identified themselves as land managers. Those opposing the amendments raised concerns about a perceived increase in wildfire risk because of restrictions on their ability to manage vegetation through burning.

7.4 A full summary of responses and government response to the consultation has been published alongside this instrument[3].

8. Applicable Guidance

8.1 Defra has published new guidance on burning under the amended regulations, identifying where and when burning may be appropriate and under what circumstances it may be licensed. It also sets out the licence application process and the evidence applicants will need to provide if seeking to burn on deep peat.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 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 +/- £10 million equivalent annual net direct cost to business which requires the completion of an Impact Assessment. A De Minimis Assessment has been carried out, and scrutinised within Defra. It estimated the annual net direct cost to businesses to be £1.3m.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the regulation targets a relatively small number of businesses and landowners only.

9.3 The legislation has an impact on small or micro businesses.

9.4 No specific action is proposed to minimise regulatory burdens on small businesses as all impacted businesses are assessed to be small or micro.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The legislation will continue to be monitored in partnership with Natural England. Tools such as satellite Earth Observation data, modelled through their 'Moorland Change Map' are used to identify where cutting and burning is taking place. Ground surveys are carried out where non-compliance is suspected.

10.2 In addition, regular engagement with landowners and managers will take place to assist in monitoring the impacts of this instrument.

[3] Summary of responses and government response - https://www.gov.uk/government/consultations/heather-and-grass-burning-in-england/outcome/summary-of-responses-and-government-response#government-response

10.3 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Mary Creagh, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement:

"This instrument has no significant annualised net impact on business (greater than +/- £10 million net annualised) and it would not therefore be appropriate to undertake a review given the costs of doing so".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").