

## **Submission from Wildlife and Countryside Link**

### **Background**

England contains around 355,000 hectares of upland deep peatland habitat (also known as blanket bog, but hereafter referred to as upland peat).

[<http://publications.naturalengland.org.uk/publication/30021>] These high value 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 store [[https://www.theccc.org.uk/wp-content/uploads/2013/07/ASC-2013-Chap4\\_singles\\_2.pdf](https://www.theccc.org.uk/wp-content/uploads/2013/07/ASC-2013-Chap4_singles_2.pdf)] and burning heather and grass within them releases carbon. Natural England has calculated that around 260,000 tonnes of CO<sub>2</sub> are released every year from rotational burning on peat in England.

[<http://publications.naturalengland.org.uk/publication/30021>] Rotational burning also reduces the biodiversity value of upland peat habitats, and affects water quality.

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

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’.

[<https://www.gov.uk/government/news/englands-national-rainforests-to-be-protected-by-new-rules>] The Heather and Grass Burning Regulations 2021 have been introduced as an SI to put this partial ban into law.

### **Concerns**

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

- The first flaw concerns scope. The SI prohibits burning on designated sites. Regulation 2 sets out 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. Only 109,043 ha of English upland peat meet these specifications, out of a total of 355,000 hectares. [104,241 ha in SACs and 4,802 ha in Bowland SPA – RSPB calculations from JNCC data] This means that the maximum application of the ban would see it protect approximately 30.7% of English upland peat. At least 69.3% of upland peat is excluded from the ban as it is outside the specification for a designated site.
- The second flaw in the SI concerns licenses that will allow burning in designated sites to continue. Regulation 4 gives the Secretary of State the power to grant a license to permit burning in a designated site 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;
  - (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.

The SI contains no evidence threshold that licenses made on the above grounds will have to meet.

## **Conclusion**

The SI will cover just 30% of the upland peatland it has been introduced to protect. The wide-ranging power given to the SoS means that, even in the 30% of upland peat habits covered, the protection offered can be revoked by a license. There is no specified standard of evidence that an application for such a license must meet to be successful. This constitutes an incomplete and imperfect protection for upland peat.

For example, changing the specification for designation to a site being in an SSSI or a SAC or SPI would widen the proportion of upland peatland protected by the ban. Similarly, 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, would provide a standard of evidence for burning license applications to meet. It would be useful to hear from the Department why it has not opted for these options.

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

**19 February 2021**

## **Defra's response**

### **1. The scope of the instrument**

It is correct to point out that the proposed regulations will only apply to Sites of Special Scientific Interest (SSSI) that are also Special Area of Conservation (SAC) or Special Protected Areas (SPA). It is, however, important to recognise the current regulatory landscape. As it currently stands, a third of protected blanket bog have consents 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/land managers whilst the remainder is managed by other methods. 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. At the time of writing, 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 would put in place legislation to achieve this. These Regulations are the result.

The regulations directly address the issue of burning of vegetation where a valid consent is held but, importantly, does not seek to replace or supplant existing regulatory measures designed to prevent damaging land management practices. It instead seeks to regulate the most damaging practices on our most protected sites.

### **2. The licensing regime and absence of evidence thresholds**

It is accurate to describe the circumstances where the Secretary of State will have the power to grant a licence under Regulation 4 of the regulations; there is also the power of the Secretary of State to refuse to grant a licence or to issue a licence with conditions. It is, however, worthwhile noting that in making any such decision, the Secretary of State will be obliged to receive and consider the advice of Natural England and consider the requirements of the Conservation of Habitats and Species Regulations 2017. Whilst the Secretary of State must consider the advice of Natural England, he may also seek the advice of other stakeholders and interested parties, including the local Fire and Rescue Service, for example. As was described within the Explanatory

Memorandum, much of the detail of how this regulation will be administered will be set out in new 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.*

We consider that this guidance is the proper place to detail the evidence that is required upon which the Secretary of State **may** grant a licence; including such detail within the regulations would restrict our ability to respond with agility to changes in the scientific and environmental consensus. We have always planned to seek the views of stakeholders such as those represented by Link, to ensure that the guidance that is developed supports and encourages sustainable land management practices that reflect our ambitions to restore and protect our peatlands. We will also be engaging with the Chief Fire Officers Association to ensure that their expertise is available to the Secretary of State when they come to make their determinations under the regulations.

### **3. COP26 and related matters**

We have always been clear of the need to phase out rotational burning of protected blanket bog to conserve these vulnerable habitats. There is an established scientific consensus that burning of vegetation on such sites is damaging. These regulations represent a crucial step in meeting the Government's nature and climate change mitigation and adaptation targets, including the legally binding commitment to reach net zero carbon emissions by 2050.

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. Indeed, the need to protect our peatlands from the threat of wildfire is greater than ever and action to address the threat, both short term removal of fuel load and longer-term restoration of these sites, has required greater consideration. The licensing regime represents a means of ensuring that burning only take place in the right place, at the right time and for the right reasons.

### **In Conclusion**

The proposed regulation will bring an estimated 62% of the blanket bog habitat in England under regulatory protection from burning; it will do this by making both a consent from Natural England and the requirement for a licence from the Secretary of State a legal requirement, whilst addressing the issue of consents held in perpetuity by landowners.

The new regulations represent a significant step forward in protecting peat and we recognise that efforts to restore and protect peat extends beyond this specific regulation. All peat is important, and we are committed to the sustainable management of England's peatlands. The Chancellor announced in March 2020 that as part of the Nature for Climate Fund, 35,000ha of peatland restoration would be achieved over the next 5 years. We have also commenced a project to map England's peatlands so that we can better understand where our restoration efforts can be best deployed and, critically, can most effectively focus our protection measures. These actions represent significant steps forward in our restoration and protection efforts and will require us to continue to work closely with a wide range of stakeholders.

The Government will be setting out further measures to restore, protect and manage England's peatlands this year as part of a package of measures to protect England's landscapes and nature-based solutions

### **Facts and Figures**

There are approx. 230,000 ha of blanket bog priority habitat in England.

There are an estimated 1,418,500 ha of peatland in England (including deep peaty soils, shallow peaty soils and soils with peaty pockets). (Table 1 in 'England's Peatlands'. NE257 <http://publications.naturalengland.org.uk/publication/30021> )

There is an estimated 355,300 ha of blanket bog and valley mire (Table 2 in the above report).

142,000 ha represents 62% of the blanket bog priority habitat in England.

142,000 ha represents 40% of the blanket bog and valley mire in England (in the above report).

142,000 ha represents 10% of peatlands in England.

**24 February 2021**