

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Third Delegated Legislation Committee

HEATHER AND GRASS ETC. BURNING
(ENGLAND) REGULATIONS 2021

Tuesday 27 April 2021

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The Committee consisted of the following Members:

Chair: †DR RUPA HUQ

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| Bryant, Chris (<i>Rhondda</i>) (Lab) | † Morris, James (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| Caulfield, Maria (<i>Lewes</i>) (Con) | † Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| Davies, David T. C. (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| Duguid, David (<i>Parliamentary Under-Secretary of State for Scotland</i>) | Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| Gardiner, Barry (<i>Brent North</i>) (Lab) | Twigg, Derek (<i>Halton</i>) (Lab) |
| Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Whitley, Mick (<i>Birkenhead</i>) (Lab) |
| Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| † Jones, Ruth (<i>Newport West</i>) (Lab) | Kevin Maddison, <i>Committee Clerk</i> |
| Mann, Scott (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † attended the Committee |
| † Morden, Jessica (<i>Newport East</i>) (Lab) | |

Third Delegated Legislation Committee

Tuesday 27 April 2021

[DR RUPA HUQ *in the Chair*]

Heather and Grass etc. Burning (England) Regulations 2021

9.25 am

The Chair: Before we begin, I would like to remind Members to observe social distancing and to sit only in places that are marked. Our colleagues from *Hansard* would appreciate it if Members could send their speaking notes to Hansardnotes@parliament.uk

Ruth Jones (Newport West) (Lab): I beg to move,

That the Committee has considered the Heather and Grass etc. Burning (England) Regulations 2021 (S.I. 2021, No. 158)

It is a pleasure to speak for Her Majesty's Opposition on the first of two Statutory Instruments that I will speak to today. I must put on record that my hon. Friend the Member for Brent North would have liked to attend the Committee but cannot do so on account of current restrictions. He is passionate about peatland burning issues, and he wanted that to be on the record.

The regulations seek to prohibit a person burning any specified vegetation on areas of peat more than 40 cm 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 those 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. That sounds very good on the face of it, but, as ever, it is about the detail with this Government, or should I say, the lack of detail.

I note that no impact assessment has been produced for the SI because Ministers have deemed that

“There is no, or no significant, impact”

on the private, voluntary or public sector foreseen. We shall see what happens in the time ahead.

I feel sure that the Minister will know that England contains around 355,000 hectares of upland deep peatland habitat, with a particular concentration of the habitat being found in the Pennines. Those high-value upland peat habitats are subject to rotational burning. That practice sees vegetation on the top of peat set alight at regular intervals to create better conditions for grouse rearing for the shooting industry.

Upland peat habitats are a significant carbon store and burning heather and grass within them releases carbon. Natural England has calculated—I pay tribute to all the staff of Natural England for their work in these difficult times, done without much direction and support from the Government—that around 260,000 tonnes

of carbon dioxide are released every year from rotational burning on peat in England alone. Rotational burning also reduces the biodiversity value of upland peat habitats and affects water quality.

In January 2021, the Government announced the introduction of a partial ban on 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”.

So the Government also say that it is an issue.

The Heather and Grass etc. Burning (England) Regulations 2021 were introduced as an SI to put that partial ban into law, but, as ever with the Government, we need to go further and do more. I know that this matter has been before the other place, and I know that many of the points raised then will be similar to the concerns that I am highlighting, but they are important, absolutely relevant, and need to be restated. That is necessary mainly because the Government have made little progress, have not listened and do not seem to want to engage.

On the substance of the SI, my first concern relates to its limited scope. It only partially prohibits burning on designated sites. The regulations state that only sites that are in a SSSI, a special area of conservation or a special protection area can be considered as designated sites for the purposes of the regulations. The Wildlife and Countryside Link, in an example of its wonderful work, has estimated that 109,000 hectares of English upland peat meet those specifications out of a total of 355,000. In response to Link, the Department for Environment, Food and Rural Affairs has suggested coverage is slightly higher at 142,000 hectares. 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 hectares. However, that figure only 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 burned. Natural England has confirmed that there are total of 355,000 hectares of upland peat in England. That 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 and commented:

“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.”

In fact, only a minority of upland peat in England will be covered by the regulations—60% of upland peat is excluded from the regulations as it is outside the specification for a designated site. That limited scope will hinder the effectiveness of the regulations. For the best climate and ecological result, all upland peat should be included in the ban. I could not be clearer than that. At the very least, a simple improvement would be to change the specification for designation to a site being in an SSSI, an SAC or SPI to widen the scope and

increase the proportion of upland peatland protected by the ban. The SI does not go far enough and the world is watching what happens next.

I am deeply concerned by the language used in the SI. The Minister will recall that throughout the Committee stage of the Environment Bill, or the ‘Missing in Action’ Bill that we like to call it, my hon. Friends the Members for Cambridge (Daniel Zeichner) and for Southampton, Test (Dr Whitehead) regularly called the Government out on their weak language, loose interpretations and essentially disappointing lack of ambition. As I said then, and repeat now, language is very important. I am afraid that the terms of the SI are undermined by loosely worded exemptions and it has virtually nothing to say about enforcement.

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

“for the purposes of conservation, enhancement or management of the natural environment for the benefit of present and future generations;

for the safety of any person;

to reduce the risk of wildfire; or

because the specified vegetation is inaccessible to mechanical cutting equipment and any other method of management is impracticable.”

Those wide-ranging powers given to the Secretary of State mean that even in 40% of upland peat habitats covered by the regulations, 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. I therefore join with many campaigners in calling for 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 evidence support from Natural England for conservation burning in any licence application made on such grounds.

The SI, and its very evident weaknesses, undermine the Government’s advocacy for nature-based solutions to climate change. Indeed, the rotational burning season this year coincides with the UK’s hosting of the global climate conference COP26, which will see the Government championing nature-based solutions to climate change. In the words of the Minister’s departmental colleague, Lord Goldsmith,

“the UK will use our Presidency of COP26 to persuade other countries to put nature at the heart of their climate response”.

Warm words, but as things appear to be moving, they are empty words.

I am grateful to Link for the polling that it commissioned to gauge the views of people on rotational burning and upland peat. The results speak for themselves. They reveal that 60% of the British public want to see the Government’s peat burning ban extended to cover all peatland at risk of being burned, and only 3% oppose that. Some 56% of those polled also want a ban on the burning of all at-risk peatland in Scotland, Wales and

Northern Ireland. Two thirds of people also want promises to protect peatland included in the UK pledges for COP26, and 67% want the Government to ensure our natural carbon stores, like peatlands, are healthy and capture as much carbon as possible.

Those results show that the public recognise the importance of upland peat and that they wish to see its potential as a nature-based solution to climate change realised, and they very clearly support a comprehensive burning ban. Why will the Minister and Department not listen to the people and act once and for all?

We are in the middle of a climate emergency and our people are crying out for real leadership. Labour stands ready to provide that leadership, as we have demonstrated every step of the way during our consideration of the Environment Bill, the Agriculture Bill and the Fisheries Bill. That stands in stark contrast to the Government, who speak but do not do. The regulations reflect their lazy and unimaginative approach, and it is simply not good enough. At the conclusion of the debate, I intend to test the will of the Committee.

9.36 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow):

This is the first time that I have had the pleasure to serve under you, Dr Huq, and it is great to see you in the Chair. As ever, it is good to see the shadow Minister and I offer belated happy birthday wishes, which I omitted to say when we debated last week. I hope that it went well.

I thank all those who have inputted behind the scenes and given views on this complicated subject. I welcome the opportunity to discuss the regulations in more detail to clarify some of the points about why we have introduced them, how committed we are to them and how important they are to protect the nation’s peatlands. I hope that I will be able to address some of the concerns expressed by the hon. Member for Newport West.

The SI, which was laid on 16 February 2021, seeks to ban the burning without a licence of specified vegetation on peat over 40 cm in depth on SSSIs that are also a special area of conservation. Those are critically important areas for peat, which is why they are the focus of the regulations. The purpose of those regulation is to prevent further damage to approximately 142,000 hectares of protected peat by clearly setting out the only circumstances in which the Secretary of State, as the licensing authority, may grant a licence for burning. That would only occur in very limited, clearly defined and evidenced circumstances. Those are the only conditions on which a licence for burning would be granted and without such a licence, burning will be prohibited.

The restoration of England’s peatlands is a priority for the Government and the regulations will help us to achieve net-zero carbon emissions by 2050, and to protect valuable habitats and the biodiversity within. Blanket bog is a fragile peatland habitat of international importance. The UK has 30% of the world’s blanket bog, so we hold a large proportion of that very important habitat.

England’s peatlands overall store around 580 million tonnes of carbon, but they emit about 11 million tonnes of carbon dioxide equivalents per year. Therefore, restoring our peatlands is a crucial part of addressing climate change and achieving net-zero emissions by 2050.

[Rebecca Pow]

Blanket bog is a habitat at risk from being further degraded were it not protected from damaging activity. Under the Conservation of Habitats and Species Regulations 2017, the Government have responsibility for protecting that priority habitat, maintaining it as an active bog and restoring it to favourable status. Basically, that means that it is wetter, and it will have more species living within it that enjoy that particular habitat.

The Government's ambition is to have healthy peatlands that will provide us with a wealth of ecosystem services. That includes carbon storage and sequestration, a natural habitat for wildlife, high-quality drinking water and flood mitigation. Blanket bog makes up around 40% of England's deep peat reserves and is one of our most extensive protected habitats, yet only 12% of it is in a near natural state. The remainder is degraded by practices that impact on the natural functioning state of that habitat. Rotational burning as a moorland management tool is carried out to manage unnaturally dominant heather species in winter months, typically on a 12 to 15 year rotation. Although this activity does not have a significant impact on carbon emissions per se, there is now an established scientific consensus that the burning of vegetation on blanket bog can be damaging to peatland formation and habitat condition, making it difficult—in some cases, impossible—to restore these habitats to their natural state and to restore their hydrology.

Landowners and managers have required consent from Natural England to burn on a protected blanket bog. Since 2017, only 47% of those consents have expired or been removed by Natural England; the majority remain in perpetuity, covering about 52,000 hectares of protected priority habitat. The Government have previously stated that if voluntary measures to cease burning on blanket bog did not work, they would look at the role of legislation. The voluntary approach has not worked, so this instrument aims to allow the Government to meet their obligations to bring about more sustainable practices.

The regulations ban the use of burning as a management practice on protected blanket bog sites apart from in the case of specific exemptions. I will just touch on those. First, the prohibition does not apply on land that could never be accessed by cutting equipment; cutting equipment is a tool that can be used instead of burning. Some areas—exposed rock and scree, for example, or where the land is on a really steep slope, in excess of 35 degrees—can continue to be managed without the need for a licence. Secondly, where land is otherwise inaccessible to cutting equipment, perhaps by virtue of its very remote nature and because other methods of appropriate management are impractical, a licence may be considered to allow burning to take place.

The Government have also included in the regulations explicit reference to the objective of preventing wild fires. Wild fires can be devastating for the environment and that risk has not previously been granted sufficient weight.

The evidence and process by which the Secretary of State will make decisions on licence applications will be set out in accompanying guidance. That guidance will be published by 1 May to allow sufficient time for good-quality applications for licences to be made in advance of the 2021 burning season, which commences on 1 October.

The shadow Minister asked about detail. The detail will be in the guidance, which, as she can tell, is coming out pretty much immediately. An awful lot of work has gone on stakeholder engagement to come up with the guidance so that it is really clear to everybody what these very small exemptions might be and how they might be used. But we want it to be clear to everybody that basically we mean business about the ban. The guidance will emphasise an aspiration that the management of the protected site should be complementary to high quality natural habitat restoration plans. It is hoped that through such plans—and these plans are really crucial—the need to manage the sites by burning will diminish and, ultimately, become unnecessary: the areas will be getting wetter, so burning will not be required. As I said, work to develop and produce the guidance is well under way. Much of the engagement has been with the upland management sector and environmental non-governmental organisations, so that we get this right.

The guidance will also set out with whom the Secretary of State will consult. It will be not just Natural England but other interested stakeholders—including, for example, the local fire and rescue service when a licence for wild fire mitigation purposes is being considered. The input of such services is hugely valued on the issue of controlling wild fires.

The Government are very aware that the management of upland habitats on which the regulations will have an impact is complex and unique, and that the guidance must be capable of being understood by both large land managers and small estate teams. They are also aware of the view, backed up by science, that there is a risk that burning heather to reduce wild fire could itself dry the land out and exacerbate the risk. The Government recognise that the new regulations may place additional burdens on some landowners and managers, but we also recognise that inaction and the continuation of burning of unprotected sites will be unacceptable as it is releasing carbon and therefore it is bad for the climate.

The SI attempts to strike the right balance between protecting our habitats from harm and ensuring that our landowners and managers have the right tools available to protect those habitats and restore them to their natural state. Obviously, we need to work with those landowners and farmers in our future new ELM—environmental land management—system, and our new schemes such as the nature for climate fund to restore those peatlands. It is really important that we have very good working relationships with them.

The regulations are essential as we look to extend protections to some of our most vulnerable habitats. The hon. Lady was quite adamant that all peats had to come under the ban, but the point is that the SI is dealing with the very specific deep peat, which is so precious and such an important habitat. It is absolutely right that we protect that, but I would like to share with the hon. Lady that we have a much wider plan for all peat. The SI will protect 140,123 hectares of deep peat, but obviously all peat is important, which is why we are releasing a package of further measures through our peat action plan, which will be issued shortly. That will deal with peat in other areas, not least lowland peat, which is extremely important. We have a lowland peat taskforce to work mainly with farmers in that lowland to work out how that peat can be restored as well, and how we can also still produce sustainable food from that

area. We are also working very closely with the horticultural industry to bring about the ban, and we are moving absolutely at pace on that. Through our new plan, a new three-year project will be undertaken to map the extent of England's peatlands, so that we have really clear data that can guide and inform us, because the science is so important in all that we do.

I trust that the Committee understands the need for the SI. All peat is really important, and not just that protected by the SI. I hope I have made it clear that we are looking at all peat, but the SI is one of the important tools to drive us in the right direction to protect those crucially vital, precious habitats.

The Chair: Because we are in negative SI territory, and the Opposition have prayed against the measure, I call the shadow Minister to respond to the debate.

9.48 am

Ruth Jones: It was remiss of me not to say earlier that it is a pleasure to serve under your chairmanship today, Dr Huq.

I thank the Minister for her contribution. She made some interesting points and is quite right that we can all agree that all peat is very important, and we need to take care of it. She mentioned that she wants the SI to strike the right balance, but I fear that the balance is still skewed. In common with many campaigners in communities across England, I remain unimpressed by the inadequate attempt to tackle the issue.

A shorter and neater way to describe where we are is as follows: the Government promised the House, stakeholders and the country an overarching strategy

but they have yet to deliver it. Yes, the Minister spoke about the guidance to come, and we will hold the Government to account on that, but my job and that of campaigners, experts and stakeholders is to hold the Government accountable on every step of the way.

Two major weaknesses prevent the regulations from achieving their stated policy aims and objectives. To remind the Committee and those listening, the objective is to protect upland peat habitats from the impact of burning. As I said in my opening remarks, the limited scope of the SI renders it fundamentally flawed, which is compounded by the dangerously loosely worded exemptions. Like many stakeholders and experts who will have listened with dismay to the Minister's response, I am unable to support a weak and ineffective set of regulations. The Opposition will oppose the SI.

Question put,

The Committee divided: Ayes 3, Noes 2.

Division No. 1]

AYES

Morris, James
Pow, Rebecca

Pursglove, Tom

NOES

Jones, Ruth

Morden, Jessica

Question accordingly agreed to.

9.50 am

Committee rose.

