

2007 No. 2003

AGRICULTURE, ENGLAND

HILL LANDS

The Heather and Grass etc. Burning (England) Regulations 2007

<i>Made</i>	- - - -	<i>11th July 2007</i>
<i>Laid before Parliament</i>		<i>16th July 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Secretary of State, in exercise of the powers conferred by section 20(1) of the Hill Farming Act 1946(a), makes the following Regulations:

Title, commencement and application

1.—(1) These Regulations may be cited as the Heather and Grass etc. Burning (England) Regulations 2007 and come into force on 1st October 2007.

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

“burning notice” has the meaning given to it in regulation 8(1);

“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;

“railway land” means land forming part of any operational railway;

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

“upland area” means all the land shown coloured pink (except land in the Isles of Scilly) in the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less-favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food(b).

(a) 1946 c.73. The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by virtue of article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(b) These maps are deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, 2 Horseferry Road, London SW1P 2AL.

Exclusion of land cultivated as private gardens or allotment gardens

3. These Regulations do not apply to land cultivated as private gardens or allotment gardens.

Exclusion from certain provisions of burning on railway land

4. Regulations 6(1)(b) to (e), 8 and 9 do not apply to the burning of any specified vegetation carried out on railway land by or under the authority of Network Rail or Transport for London.

Regulation of burning

5.—(1) A person must not commence the burning of any specified vegetation on any land between sunset and sunrise.

(2) A person must not burn any specified vegetation on any land unless—

- (a) there are, where the burning is taking place, sufficient persons and equipment to control and regulate the burning during the entire period of the operation;
- (b) he takes, before starting burning and during the entire period of the operation, all reasonable precautions to prevent injury or damage to any adjacent land, or to any person or thing on that land.

Prohibition on burning except under licence

6.—(1) A person must not do any of the following except under (and in accordance with) a licence issued by Natural England under regulation 7—

- (a) burn any specified vegetation outside the burning season;
- (b) burn, in a burning season, a single area, or two or more areas within 5 metres of each other with a combined area, of more than 0.5 hectares of specified vegetation—
 - (i) which has a slope of more than 45 degrees; or
 - (ii) where more than half of that area is covered by exposed rock or scree;
- (c) burn, in a single burn, an area of more than 10 hectares of specified vegetation;
- (d) burn, in a burning season, specified vegetation in a manner which exposes—
 - (i) a single area, or two or more areas within 5 metres of each other with a combined area, of more than 0.5 hectares of bare soil; or
 - (ii) an area of bare soil which—
 - (aa) extends more than 25 metres along the bank of a watercourse; and
 - (bb) is more than a metre wide at all points (for a continuous stretch of more than 25 metres), measured from the edge of the bank of the watercourse;
- (e) in connection with the burning of specified vegetation, leave soil smouldering for more than 48 hours.

(2) In paragraph (1)—

- (a) “area of bare soil” means an area of soil of which no more than 2% is covered by vegetation or plant litter;
- (b) “watercourse” means any natural or artificial channel through which water flows, whether some or all of the time, including rivers, streams, ditches, grips, drains, cuts, culverts, dykes and sluices, but excluding mains and other pipes.

Provisions as to issuing or refusal of licences

7.—(1) A person may apply to Natural England for a licence permitting him to burn specified vegetation outside the burning season or in a manner otherwise prohibited by regulation 6(1).

(2) Any application must be made in a manner specified by Natural England and 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 a burning season, not before the end of the preceding burning season; or
- (b) in the case of a burn (or burns) intended to take place outside a burning season, not more than 56 days before the date (or the last date if more than one) on which the applicant proposes to burn.

(3) Natural England may grant a licence only if it is satisfied that the proposed burning is—

- (a) in the case of railway land, necessary or expedient for good maintenance of the land or for the purpose of pest control; or
- (b) in the case of all other land, necessary or expedient for—
 - (i) the conservation, enhancement or management of the natural environment for the benefit of present and future generations; or
 - (ii) the safety of any person.

(4) If Natural England proposes—

- (a) not to issue a licence under paragraph (3);
- (b) to issue a licence in respect of only part of the land to which the application relates; or
- (c) to issue a licence subject to any conditions,

it shall notify the applicant in writing of its proposed decision and of the reasons for it.

Burning notices

8.—(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 him 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 him from the date it is served.

(2) A burning notice may not apply for more than two years from the date the notice is served.

Representations against burning notices

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

(2) Any such representations must be made within 28 days of the date of the burning notice.

(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 his 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.

Amendment of the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005

10. The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005^(a) are amended by substituting paragraph 17 of the Schedule with the following—

^(a) S.I. 2005/3459, to which there are amendments not relevant to these Regulations.

“17.—(1) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium unless—

- (a) there are, where the burning is taking place, sufficient persons or equipment to control and regulate the burning during the entire period of the operation;
- (b) he takes, before commencing burning and during the entire period of the operation, all reasonable precautions to prevent injury or damage to any adjacent land, or to any person or thing on that land.

(2) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium—

- (a) on land which is within an upland area, during the period within any year from 16th April to 30th September, both dates inclusive; or
- (b) on all other land, during the period within any year from 1st April to 31st October, both dates inclusive,

except under (and in accordance with) a licence issued by Natural England under regulation 7 of the Heather and Grass etc. Burning (England) Regulations 2007.

(3) In sub-paragraph (2), “upland area” means all the land shown coloured pink (except land in the Isles of Scilly) in the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less-favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food.”(a)

Revocation

11. The following instruments are revoked in relation to England only—

- (a) the Heather and Grass etc. (Burning) Regulations 1986(b);
- (b) the Heather and Grass etc. (Burning) (Amendment) Regulations 1987(c).

11th July 2007

Jonathan Shaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) These maps are deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, 2 Horseferry Road, London SW1P 2AL.
(b) S.I. 1986/428, amended by S.I. 1987/1208, 2003/1615.
(c) S.I. 1987/1208, amended by S.I. 2003/1615.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the Heather and Grass etc. (Burning) Regulations 1986 (the “1986 Regulations”) in relation to England and replace them with new provisions governing the burning of heather, rough grass, bracken, gorse and vaccinium.

Like the 1986 Regulations, these Regulations do not apply to private gardens or allotment gardens (though there is no longer an exclusion for pleasure grounds) (regulation 3) and certain of its provisions do not apply to railway land (regulation 4).

Like the 1986 Regulations, these Regulations prohibit burners from starting burns between sunset and sunrise, and require them to ensure that there are sufficient persons and equipment to control burns and to take all reasonable precautions to prevent injury or damage arising from burns (regulation 5). Burners are no longer required to notify others with an interest in the land on which the burning is to take place, or land adjacent to it, of their intention to burn.

Regulation 6(1)(a) prohibits burning without a licence outside the “burning season” (which is defined in regulation 2 and is longer for land in the uplands than for land outside it). This mirrors the 1986 Regulations. Regulation 6(1)(b) to (e) prohibits certain additional burning practices without a licence. Regulation 7 establishes a new procedure for applying for licences.

Regulation 8 is a new provision which gives Natural England the power, where it believes that burning has taken place in contravention of these Regulations, to require the occupier of the land concerned to notify Natural England of future burns for a period of up to two years. Regulation 9 makes provision for persons to make representations to a person appointed by the Secretary of State against the imposition of such a requirement.

Regulation 10 amends the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 so that the requirements of regulations 5 and 6(1)(a) are subject to cross-compliance under the Single Payment Scheme. Previously, the requirement to give notice of an intention to burn was also subject to cross-compliance.

The power to enter and inspect land for the purposes of these Regulations is governed by section 34 of the Hill Farming Act 1946, and section 20(2) of that Act provides that any person who contravenes any provision of these Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available on the OPSI website: www.opsi.gov.uk.

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