
 STATUTORY INSTRUMENTS

1986 No. 428

AGRICULTURE

HILL LANDS

The Heather and Grass etc. (Burning) Regulations 1986

<i>Made - - - -</i>	<i>4th March 1986</i>
<i>Laid before Parliament</i>	<i>11th March 1986</i>
<i>Coming into Operation</i>	<i>1st April 1986</i>

The Minister of Agriculture, Fisheries and Food as respects England and the Secretary of State as respects Wales, in exercise of the powers conferred by section 20(1) of the Hill Farming Act 1946^(a) and now vested in them^(b), and of all other powers enabling them in that behalf, hereby make the following regulations:—

Citation, commencement and extent

1. These regulations may be cited as the Heather and Grass etc. (Burning) Regulations 1986, shall come into operation on 1st April 1986 and shall extend to England and Wales.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

“the Minister” means—

(a) in relation to England, the Minister of Agriculture, Fisheries and Food;

(b) in relation to Wales, the Secretary of State;

“open space” means any land, whether enclosed or not—

(a) on which there are no buildings, or

(b) of which not more than one twentieth is covered with buildings,

and the whole, or the remainder, of which isⁱⁱ used for the purposes of recreation, or lies waste and unoccupied;

“railway land” means land forming part of any of the railways of the British Railways Board or London Transport Executive;

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

“upland area” means—

(a) in relation to England, any area shaded pink on one of the 4 maps numbered 1 to 4, each such map being marked “map of upland areas in England” and with the number of the map, dated 26th February 1986, signed and sealed by the Minister and deposited at the offices of the Ministry of Agriculture, Fisheries and Food at Great Westminster House, Horseferry Road, London SW1P 2AE;

(b) in relation to Wales, any area shaded pink on the map marked “map of upland areas in Wales”, dated 24th February 1986, signed by the

(a) 1946 c.73; section 20(1) was extended by the Hill Farming Act 1985 (c.32), section 1.

(b) In the case of the Secretary of State, by virtue of S.I. 1978/272.

Minister and deposited at the offices of the Welsh Office Agriculture Department at Plas Crug, Aberystwyth, Dyfed SY23 1NG.

(2) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these regulations.

Exclusion of land cultivated as pleasure grounds or for similar purposes

3. These regulations shall not apply to land cultivated as pleasure grounds, private gardens or allotment gardens except in so far as such land is adjacent to that on which burning is to take place or is taking place.

Exclusion from certain provisions of burning of cut vegetation on railway land

4. Regulations 5(2)(c), 6, 7 and 8 shall not apply to the burning of any cut vegetation carried out by or under the authority of the British Railways Board or the London Transport Executive on railway land.

Regulation of burning during any period of the year

5.—(1) No person shall during any period of the year commence burning any specified vegetation on any land between sunset and sunrise.

(2) A person shall not at any time 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; and
- (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 whatsoever on that land; and
- (c) he has, not less than 24 hours and not more than 72 hours before commencing burning on any land, given notice in writing of the date or dates, time and place at which, and the extent of the area on which it is his intention to burn—
 - (i) to any person who has an interest in that land either as owner or occupier, and
 - (ii) except in the case of any burning carried out by or under the authority of the British Railways Board or the London Transport Executive on railway land, to any person whom he knows, or could with reasonable diligence have discovered, to be in charge of any land adjacent to that on which the burning is to take place.

(3) The British Railways Board or the London Transport Executive shall not at any time burn or cause or permit to be burned on railway land any uncut specified vegetation unless they have, not less than 7 days and not more than 28 days before burning commences, caused notice of the date or dates, time and place at which, and the extent of the area on which it is the intention to burn, to be published in accordance with regulation 9(5).

Prohibition on burning during certain periods of the year except under licence

6. Without prejudice to regulation 5, no person shall burn any specified vegetation during the following periods of the year, that is to say—

- (a) between 15th April and 1st October; and additionally

(b) on land which is not within an upland area, between 31st March and 16th April or between 30th September and 1st November;
except under, and in accordance with any conditions specified in, a licence issued by the Minister under regulation 7.

Provisions as to issuing or refusal of licences

7.—(1) Any person who, apart from the provisions of these regulations, would have a right to burn any specified vegetation on any land may apply to the Minister for a licence permitting him to burn any specified vegetation between the dates specified in regulation 6.

(2) Any such application shall be made in writing not less than 28 days before the date or the first date on which the applicant proposes to burn and not more than 56 days before the date or the last date on which the applicant proposes to burn.

(3) It shall be the duty of the applicant—

(a) to inform the Minister of the proposed date or dates, place, method and area of the burning, and to provide sufficient information to satisfy the Minister that the proposed burning is necessary and expedient for the purpose of improving the land or, in the case of proposed burning on railway land, is necessary and expedient for good maintenance of the land or for the purpose of pest control; and

(b) not later than the date on which he applies to the Minister, to give—

(i) to any other person who has an interest in the land on which the burning is to take place either as owner or occupier; and

(ii) except in the case of proposed burning by or under the authority of the British Railways Board or the London Transport Executive on railway land, to any other person whom he knows, or could with reasonable diligence have discovered, to be in charge of any land adjacent to that on which the burning is to take place;

notice in writing of the application to the Minister together with the information included in that application pursuant to sub-paragraph (a) above, and that representations may be made to the Minister within 7 days of receipt of such notice.

(4) The British Railways Board and the London Transport Executive shall cause to be published in accordance with regulation 9(5), and within the time limits specified in paragraph (2) above, notice of any application made by them to the Minister under this regulation relating to railway land together with the information included in that application pursuant to paragraph (3)(a) above and notice that representations may be made to the Minister within 7 days of the date of the notice.

(5) The Minister, after considering any representations he may have received under paragraph (3)(b) or (4) above, may, if he considers it necessary and expedient for the purpose of improving the land or, in the case of proposed burning on railway land, necessary and expedient for good maintenance of the land or for the purpose of pest control, grant to the applicant a licence to burn any specified vegetation on the whole or any part of the land to which the application relates, subject to any conditions which may be specified in the licence.

(6) If the Minister proposes—

(a) not to issue a licence under paragraph (5) above; or

(b) to issue a licence in respect of part only of the land to which the application relates; or

(c) to issue a licence subject to any conditions;

he shall notify the applicant in writing of his proposed decision and of the reasons for it, and shall accord to the applicant an opportunity of appearing before and being heard by a person appointed for the purpose by the Minister.

(7) If within 7 days of receipt of such notification the applicant notifies the Minister that he wishes to appear before and be heard by such a person, the Minister shall appoint a person and shall inform the applicant and any persons whose representations he has considered of the date, time and place at which the person so appointed will hear the applicant and such persons.

(8) The Minister shall supply a copy of the report of any person so appointed to any persons who appeared before the person submitting it, shall consider that report before issuing or refusing to issue a licence under paragraph (5) above, and may issue a licence permitting the burning of any specified vegetation on a date or dates later than the date or dates proposed in the application.

(9) The Minister shall notify his decision to the applicant and to any person whose representations he has considered, and shall, if requested on or before such notification, also furnish a statement of the reasons for his decision to the applicant and to any such person.

Special provisions relating to commons

8. In any case in which the burning of any specified vegetation is to take place on or adjacent to land which forms part of a common or open space or which is subject to rights of common or similar rights of grazing, the notices referred to in these regulations shall so far as they are notices to be given to persons in charge of or having an interest in such land be given, if the persons responsible for the management of such land are not to undertake the burning, to such persons and also in any event to the persons entitled to exercise the rights of common or similar rights of grazing.

Notices

9.—(1) Any notice required by these regulations to be given to any person shall be duly given if it is delivered to him personally, or left at his last or usual place of abode or place of business, or sent to him through the post in a letter addressed to him there.

(2) Any such notice required to be given to a body corporate shall be duly given if it is delivered to the secretary or principal officer of that body at its registered or principal office or sent through the post in a letter addressed to the secretary or principal officer of that body at that office.

(3) Any such notice required to be given to any person shall be deemed to be duly given to him if it is given, in the manner prescribed by this regulation, to an agent or local representative responsible to him for the management or supervision of the land to which the notice relates.

(4) Any such notice required to be given to persons entitled to exercise the rights of common or similar rights of grazing on any land shall be duly given if a copy thereof is prominently displayed in any convenient place on that land.

(5) Any notice required to be published by regulation 5(3) or 7(4) shall be published in one or more newspapers circulating in the locality of the proposed burning area and in such other manner as the British Railways Board or the London Transport Executive, as the case may be, think best adapted for informing persons affected.

Revocation

10. The Heather and Grass Burning (England and Wales) Regulations 1983(a) and the Heather and Grass Burning (England and Wales) (Amendment) Regulations 1983(b) are hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 28th February 1986.



Michael Jopling,
Minister of Agriculture, Fisheries and Food.

Nicholas Edwards,
Secretary of State for Wales.

4th March 1986.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations regulate the burning of heather, rough grass, bracken, gorse and vaccinium throughout England and Wales. The regulations consolidate with amendments The Heather and Grass Burning (England and Wales) Regulations 1983, as amended ("the 1983 regulations"). In particular, the regulations extend the controls on the burning of heather and rough grass to cover also bracken, gorse and vaccinium.

The regulations prohibit any person from commencing to burn such vegetation during any period of the year between sunset and sunrise. Burning at any time is prohibited unless sufficient persons and equipment to control the burning are present, all reasonable precautions are taken to prevent injury or damage and at least 24 hours' but not more than 72 hours' notice is given to all persons with an interest in the land and persons in charge of adjacent land (regulation 5).

In addition, the regulations prohibit burning between 15th April and 1st October in the upland areas and between 31st March and 1st November elsewhere, except under and in accordance with a licence issued by the Minister (regulation 6). Upland areas are defined by reference to 5 maps and correspond to upland areas under the 1983 regulations. The maps are available for public inspection during normal office hours at the addresses specified in the definition of "upland area" (regulation 2(1)). Copies of these maps may be inspected during normal office hours at any Regional or Divisional Office of the Ministry of Agriculture, Fisheries and Food, or of the Welsh Office.

An applicant for a licence must give notice of his application to other persons with an interest in the land concerned or who are in charge of adjacent land. Such persons may make representations to the Minister concerning the application. If the Minister proposes not to issue a licence, or to issue a licence subject to conditions, the applicant for a licence and such other interested persons are given an opportunity to be heard by a person appointed for the purpose by the Minister (regulation 7).

The regulations do not apply to pleasure grounds, private gardens or allotment gardens except in so far as they are land adjacent to that on which burning takes place (regulation 3). New provisions are introduced in relation to the burning of heather, rough grass, bracken, gorse and vaccinium by or under the authority of the British Railways Board or the London Transport Executive on land forming part of their railways. In the case of cut vegetation those authorities are not required to give notice of burning or to obtain a licence (regulation 4). In the case of uncut vegetation the authorities are required to give public notice of the burning (regulations 5(3) and 9(5)) and of the application for a licence (regulations 7(4) and 9(5)).

Any person who contravenes a provision of these regulations commits an offence under section 20(2) of the Hill Farming Act 1946, as amended by section 72(2) of the Wildlife and Countryside Act 1981 (c.69), and may be liable to a fine not exceeding level 3 on the standard scale established by section 37 of the Criminal Justice Act 1982 (c.48) (£400 at the commencement of these regulations).

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