



The Moorland Association

Moorland Association
Clifton Castle
Ripon
North Yorkshire
HG4 4AB

18 September 2019

Marie Southgate
Deputy Director, Land Use Policy, Defra
2 Marsham Street
London
SW1P 4DF

By email only: [REDACTED]

Dear Marie,

Amendment to the Heather and Grass etc Burning (England) Regulations (2007)

Thank you for your letter of 30 August.

I wish to clarify the Moorland Association's position on a number of the points you raise and to seek assurances as to the scientific evidence to which Defra will have regard in making the proposed changes to the Regulations.

Success with the Voluntary Commitment

You state that Defra agreed with the European Commission that it would seek to demonstrate "sufficient progress" with the voluntary commitment to avoid rotational burning on blanket bog, failing which you would legislate.

In our meetings and correspondence with Natural England and Defra there appears to be a mischaracterisation of the effectiveness of the voluntary commitment to cease rotational burning and follow the Guidance to only carry out burning in areas that require it to aid restoration, which we consider has been substantially honoured. The Association's membership has demonstrably complied with the spirit of the voluntary agreement embracing the need to manage for restoration achieving a great deal of progress on furthering site improvement and functionality. As practitioners our members ensure success by what they see on the ground, which is improved sphagnum moss cover. They do not believe measuring a reduction in burning *per se* or a change of wording of consents is an effective measure of improved functionality. The failure to relinquish some consents and set them out in a new restoration plan by the end of June 2019 was a matter of over ambitious timescales and lack of resources within Natural England. We have been kept in the dark about how many of our members make up the 54% of consents that remain extant.

The move to legislate is therefore a disproportionate response to a process that is working but requires more time following the voluntary commitment's adoption. Having achieved substantial compliance, we would readily want to move to total adherence to the commitment thereafter. It is our view that both the Position Statement and the new regulations that replace it need to be workable and reflect the fact that restoration burning should be available in appropriate circumstances.

Flawed Consultation

Whilst we appreciate the modest extension to the survey response deadline, the questions posed to stakeholders evinced a very limited appreciation of the challenges that such legislative changes may pose for those involved in moorland management and related activities.

The Moorland Association was founded in 1985 with the aim of halting the loss of rare heather moorland. Its members manage more than 1 million acres of moorland in England and Wales - about a fifth of the uplands. They have regenerated 200,000 acres of heather and now strive to regenerate a further 250,000 acres through the promotion of integrated moorland management.

President The Duke of Norfolk

[REDACTED]

Director Amanda Anderson
[REDACTED]

From our meeting of 7 August, we had reasonable expectation that you would be minded to expand the questions in the survey, to be reissued to all relevant stakeholders, so as to ensure proper consideration of likely practical, financial and socio-economic impacts of a ban. The flawed nature of the consultation and failure to reissue the survey as requested is prejudicial to the interests of upland communities.

Moreover, the lateness of the communication of your decision not to expand the survey and to provide for only a limited extension of time for responses further prejudiced the ability of respondents to adequately submit their concerns, both amongst our membership and beyond.

Consultation on the Legislation

We reiterate the need for consultation on the drafting of the proposed regulations to ensure that the intended ban, exclusions and licensing system are clear and effective, in the interests of both the regulator and those affected by the legislative changes.

Impact Assessment

It remains unclear as to why you are not prepared to publish your assessment of impacts the new legislation may have on interested parties in line with normal good governance.

Set alongside the shortcomings with the survey, this gives an appearance of a pre-determined outcome, with the government having little or no regard to the survey responses.

Scientific Material to be Considered

We welcome confirmation that you intend to consider the paper '*Prescribed burning impacts on ecosystem services in the British Uplands: A methodological critique of the EMBER project*' by Dr Mark Ashby and Dr Andreas Heinemeyer, 2019.

It is our view that in formulating the drafting of the proposed legislation due account should also be taken of the following:

- The evidence review currently being conducted on behalf of the Moorland Association, in consultation with Natural England, including our consultant's interim findings set out in:
 - Paper entitled '*Studies highlighting the neutral and positive impacts of burning on blanket bog*';
 - Paper concerning flaws in published evidence entitled '*Uncovering potential flaws within the prescribed burning evidence base*';

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Timetable

We previously asked for an indication of the timescales to which Defra is working in the implementation of the new regulations. Please could you update us in this regard.

I look forward to hearing from you.

Yours sincerely

The Marquess of Downshire, Chairman