

Licensing of muirburn in Scotland

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Summary

- RSPB Scotland supports the Scottish Government's proposed approach of improving the regulation of muirburn through a licensing regime.
- We also support the proposed approach that effectively stops burning on peatlands but allows it in some circumstances under licence.
- RSPB Scotland recognise the concerns of land managers about wildfire management and support the Government's inclusion of a licensable purpose of burning on peatlands to prevent wildfire, however we would expect this to be limited and robustly regulated.

The long-awaited Wildlife Management and Muirburn Bill is now being considered by the Rural Affairs and Islands Committee of the Scottish Parliament. It proposes to introduce new licensing regimes for grouse shooting and muirburn and we very much welcome Scottish Government's intentions via this draft legislation.

Muirburn, in particular, will be a focus for intense scrutiny in Parliament and in this paper we want to take the opportunity to be as clear as we can about RSPB Scotland's thinking on it. This is a complex topic that requires detailed consideration and open discussion between all interested parties.

This document is focused on our position in relation to burning in Scotland. Our thinking continues to evolve as the evidence base grows, and as the issues are discussed, we look to modify our position accordingly. We are listening and we are open to constructive discussion.

It is clear that the status quo is not an option. The current way of managing the land has brought us to a crisis point for nature and the climate and that is why we need to see change. We need to fundamentally address how we manage all land in Scotland and that includes thinking about muirburn.

Where do we stand on muirburn and the draft legislation?

At the highest level, RSPB Scotland thinks that muirburn needs to be better regulated and we welcome the proposals in the Bill.

We believe that better regulation is required because every year members of the public send us images of muirburn that clearly contravene the Muirburn Code. We see muirburn that has burned through areas being used by nesting birds, or causing nest abandonment, burning through naturally regenerating trees or on steep slopes and scree. We also see burning that appears to be taking place on peat over 50cm. Over the last three years, the RSPB has been monitoring burning in the Scottish uplands with members of the public reporting fires via a burning app. Data reported over the 2022-23 burning season found that 17% of reported burns were apparently on peat greater than 50 cm (28 out of 162 reports).

So, whilst we must acknowledge that there will be well-trained and well-equipped practitioners doing their best in many places, this is not a universal picture. That has led us to believe that the current regulatory framework is not sufficient to ensure best practice. At present, we are in the situation where a land manager might need to apply for a licence to do something that would disturb a nest or to fell a tree, but they can set fire to a hillside without one. It does not seem unreasonable that there should be stronger regulatory oversight through a system of licensing for a high-risk land management activity such as muirburn.

It should be clear, then, that in calling for better regulation, we are not calling for a complete ban on muirburn.



Restricting burning on peatland

Whilst RSPB Scotland has not called for a complete ban on muirburn, we have called for a more specific ban on burning on peatlands.

We have called for this because we are concerned that the way Scotland's peatlands have been managed has led to them being degraded and a large source of greenhouse gas emissions.

Our thinking on this is not radical or extreme and it is advocated by others. The Climate Change Committee, which advises the Scottish Government, has called for a 'ban on damaging practices such as rotational burning on peatland'. And following this advice, the Scottish Government committed to a statutory ban on burning on peatland (except under licence for strictly limited purposes such as habitat restoration) in its response to the Werrity Report.

The principle of protecting peatlands is already established in the existing Muirburn Code (written primarily by moorland managers) which says that burning on peatland should not happen.

The government has sought to deliver on its commitment relating to burning on peatland by proposing a way forward whereby it is an offence to undertake muirburn except under licence and at the same time setting out the purposes for which a muirburn licence can be sought. Peatland is treated differently to land that is not peatland, with a restricted range of acceptable purposes on peatland. In practice, the proposed system effectively stops burning on peatlands, except where it is allowed for a small list of purposes.

Importantly, as this issue has been discussed between stakeholders and government, some land managers have raised concerns about the implications of a very tightly restricted list of purposes for which burning on peatland might be allowed (e.g. just nature restoration), specifically raising concerns about wildfire management. The government has listened and brought forward a proposal that would stop burning on peatland except where allowed under licence for nature restoration, preventing or reducing the risk of wildfires, and research.



Image Credit: Tom Aspinall (rspb-images.com)



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Muirburn and wildfire

The most important issue that land managers have raised about the implications of a ban on burning on peatlands relates to wildfire. The concern is that if muirburn is restricted by limiting where it can happen, heather and other vegetation will grow and result in a higher 'fuel load'. A high fuel load is potentially problematic because if a fire starts and gets into areas with large amounts of fuel, the fire is much more intense, difficult to control, and there is a higher risk of ignition of the underlying peat. Consequently, the argument is that ongoing burning management is required because periodic muirburn will remove the longer vegetation and reduce fuel load.

The challenge we collectively face is how to reduce emissions from degraded peatlands at the same time as adapting to increasing wildfire risk whilst also protecting and restoring biodiversity. Widespread and poorly regulated burning has been one of the management practices that has led to the current situation where we find ourselves in a nature and climate crisis, hence our push for change. We want to see a much greater focus on restoring our uplands, for example, through peatland restoration and native woodland expansion. We point to these examples because healthy peatlands and native woodlands have a lower fire risk than degraded peatlands and heather dominated hills. It's a way of reducing emissions, improving biodiversity and mitigating fire risk.

The government has listened to the concerns of land managers and attempted to address them by including wildfire management as one of the purposes for which burning is possible, including on peatland. This effectively keeps the tool of muirburn in the box so that it can be used under licence should it be required.

One reservation we have is that the evidence base relating to muirburn and wildfire is still developing and we worry that the legislation legitimises a purpose for which the evidence remains equivocal. We note, for example, that the NatureScot Evidence Review reported a lack of evidence from field studies that variation in fuel loads resulting from muirburn influences the occurrence of wildfire in moorland.

However we can see that the government is taking a precautionary approach of sorts in that including this purpose, despite the still developing evidence base, at least keeps the 'tool in the box' rather than removing it to await absolute certainty. The government is trying to find the appropriate balance in a complex and evolving situation.

Another concern is that the Bill might include the purpose of burning on peatland for wildfire management with the best of intentions i.e., keeping the tool in the box, but it could become the default reason why burning takes place. In effect there is a risk of a potential loophole that could lead to a continuation of the status quo and undermine the intention behind the legislation.

The key to alleviating our concern here lies with a robust licensing authority and regime. If the legislation goes through as introduced, it will be essential that the licensing authority is able to determine where burning for wildfire management is legitimately needed.

This will be an ongoing conversation and we hope that we can collectively create the space to discuss it constructively.

Contested science

The scientific evidence related to the effects of restricting burning on peatland is still developing and there are different schools of thought in the research community. Those that follow this debate will know that some of the latest research is being used to suggest that burning on peatlands is not detrimental and therefore restrictions on burning on peatlands, as intended in this legislation, are not required.

The lack of unanimity amongst the research community leads to difficulties for policy making. The Scottish Government is taking a precautionary approach in that it is restricting burning on peatlands whilst not completely closing that door and it is building into the legislation the ability to revise it in future in light of new evidence. We understand that more guidance is coming from NatureScot on how the precautionary principle will be applied and this is helpful.

Our view, though, is that while there are different schools of thought in the research community, this does not mean that all views are equal. Rather than just accepting the latest report, it is important to be guided by the weight of scientific opinion and we believe that the balance of evidence still supports not burning on peatlands. As such, we agree with the IUCN Peatland Programme, which takes the view that:

- The overwhelming scientific evidence base points to burning on peatlands causing damage to key peatland species, peatland ecosystem health, and the sustainability of peatland soils.
- Burning vegetation on peatland brings no benefits to peatland health or sustainability.
- Evidence points to peatland restoration management not requiring burning; burning is harmful to the prospects of peatland restoration.



Defining peatland

Another issue that will be hotly debated is the proposal to lower the depth definition for peatland. Currently, the Muirburn Code refers to not burning on peatland, where the peat is greater than 50cm deep, but the Bill proposes to reduce this depth to 40cm. This is contentious because it would increase the area that the peatland provisions in the Bill apply to.

Depth definitions can be problematic because they can create artificial thresholds that have unintended consequences. There is, for example, a large amount of carbon locked in shallow peats and a 40cm definition could potentially allow those areas to be treated as 'not peatland', which puts them at greater risk of damage. A more straightforward approach might be to say that burning should not take place on peat of any depth (except where permitted under licence).

If it is determined that a depth definition is required, **we believe that 30cm is a more robust threshold because it is more widely accepted as an international standard (Lindsay and Anderson, Peat, in Finlayson et al. 2018. The Wetland Book) and because it is the definition used in the UK Peatland Strategy.**

The muirburn season

Any muirburn licence granted for game management or for improvement of grazing will be limited to the muirburn season, defined by section 16(1) of the Bill as 1 October through to 15 April. We are concerned, however, that with climate change many moorland birds are breeding earlier. This includes some red-listed species of high conservation concern including curlew and other breeding wading birds. Many raptor species including golden eagles have also started nesting in late March. Whilst the proposal by Scottish Government for an earlier end date for the muirburn season of 15th April is helpful, **we believe that there is a strong case that the end date for the muirburn season should be the 15th March.**

The role of NatureScot

One of the issues that becomes obvious as we discuss the draft legislation is that the licensing authority will have an absolutely pivotal role. The aim of the legislation is to better regulate muirburn and raise the standard of, and lower the risks associated with, muirburn across the country. But the legislation will not achieve this directly; it relies on NatureScot's ability to operate a robust licencing regime.

Achieving the aims of the legislation will require NatureScot to have good data about peat depths, fuel loads and fire risk to make decisions. It will also require sufficient staffing to be able to make knowledgeable decisions on a case-by-case basis, which may require rapid turn around and site visits.

If NatureScot is not sufficiently resourced, the licencing regime will be less than robust and the intention of the legislation will be undermined. **We believe it is important that NatureScot and the licensing regime is properly resourced so that land managers are not hindered by poor operation.**

We believe the draft legislation is a reasonable attempt to improve the regulatory framework around muirburn.

It might not go quite as far as we have called for in the past, but it is right that the issues raised by land managers are addressed and we continue to be open to thinking about the detail.

This is a difficult policy area with lots at stake for the nature, climate and land managers and we look forward to ongoing constructive conversations.



Image Credit: Ian Francis (rspb-images.com)



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