

SCCS response to Wildlife Management and Muirburn Bill stage 1 evidence

Q7. Do you agree there is a need for additional regulation for muirburn?

Stop Climate Chaos Scotland (SCCS) is a diverse coalition of over 60 civil society organisations in Scotland who campaign together on climate change. Our members include environment, faith and belief groups, international development organisations, trade and student unions and community groups. We believe that the Scottish Government should take bold action to tackle climate change, with Scotland delivering our fair share of action in response to the Paris Agreement and supporting climate justice around the world.

Scotland's land is not currently being managed sustainably: it is the biggest source of greenhouse gas emissions. In conventional emissions reporting 'Land Use, Land Use Change and Forestry' (LULUCF) emissions are usually reported as a net figure whereby emissions from the land are cancelled out by removals of carbon in forestry, resulting in LULUCF being reported as a small source of emissions. However, if the emissions from the land are reported separately to the removals, we see that in 2020, LULUCF emissions were 12.4 MtCO₂e (removals were -11.9 MtCO₂e). Transport emissions, usually reported as the largest source, are 9.5 MtCO₂e. It is important to separate out emissions and removals because large sequestration in Dumfries and Galloway does not erase very large emissions from peatlands in the Highlands.

Since the land is currently such a significant source of emissions, in order to meet Scotland's emission reduction targets it is vital that changes - including to muirburn - are made to current land use and land management. The status quo is not an option.

As a diverse coalition, SCCS members have a range of views on the precise nature of the regulatory change required in relation to muirburn. While the government is proposing improved regulation, some members believe that this is still insufficient and want to see an end to muirburn altogether, especially when it is undertaken for 'sport'. Others may have a great deal of sympathy with this line of thinking but may have taken the view that much stronger regulation is the next logical step.

Notwithstanding this range of views on regulatory approach, we would highlight several reasons why greater regulation is required:

1) The current regulatory framework for this high-risk activity is weak

At present, muirburn is regulated under the Hill Farming Act 1946 as amended, which stipulates when muirburn can take place and the requirements for giving due notice. These legal provisions are supported by the Muirburn Code which provides guidance on the practice of muirburn, although there is no legal sanction for non-compliance with the code. Adherence to the Muirburn Code is included in GEAC 6, which means that there is the possibility that a land manager claiming public money under the agricultural payments regime could have a penalty imposed for failing to meet Cross Compliance conditions. However, non-compliance with the Muirburn Code is very difficult to police.

In effect, today it is perfectly possible for an individual that has limited knowledge about, and training in, fire management, to engage in the practice of muirburn. Possibly for this reason the Grouse Moor Management Review Group said: 'it is recommended that there should be

increased regulation for all muirburn, not just that undertaken in relation to grouse moor management¹.

Some comparisons may help illustrate the weakness of the current regulatory approach to muirburn. A land manager would require a licence if they wanted to undertake an activity that would disturb a badger, but the same land manager could set fire to a hillside without requiring a licence. A land manager would require a licence if they wanted to fell trees, yet the same land manager could burn large areas of hillside with the intention of preventing natural regeneration of trees.

Regulation of activities in the natural environment exists for important reasons. It seeks to control activities that could do harm. That harm could be to vulnerable species and habitats, air quality, property or the public interest. At present, the regulatory regime around muirburn does not sufficiently protect these interests.

2) If muirburn is being retained, the standard of muirburn practice needs to be raised and better regulation is a valuable way of achieving this outcome

Muirburn is undertaken by a variety of land managers, but primarily by sporting interests and by farmers and crofters. There is a wide range of expertise in muirburn practice amongst these land managers. While we do not have published evidence, it is likely that gamekeepers on sporting estates who regularly undertake muirburn as a core part of their role are more likely to have higher knowledge levels and better safety equipment than others that may undertake muirburn occasionally. Better regulation is a way of ensuring that all those that undertake muirburn meet basic standards of practice.

3) A proportion of wildfires are started by muirburn

The NatureScot evidence review on the impacts of muirburn on wildfire prevention, carbon storage and biodiversity² concluded ‘that there is evidence that muirburn directly causes a proportion of wildfires that occur, however there remains uncertainty regarding this proportion’. Given that muirburn can be a cause of wildfire, better regulation as a means of reducing wildfire risk is reasonable. With the incidence and severity of wildfires expected to increase in coming years due to climate change³ we should be doing all we can to minimise the risk of wildfires.

4) The Muirburn Code appears to be routinely ignored

The current version of the Muirburn Code⁴ was produced by the Moorland Forum and launched by (then) Cabinet Secretary Roseanna Cunningham, on 22 September 2017, and updated on 20 May 2021. The Code sets out the statutory obligations that “must” (or “must not”) be undertaken – these relate mainly to the legal restrictions (seasons, fire safety, etc) and other statutory issues such as protected sites, species, ancient monuments, etc. This is accompanied by best practice guidance that “should” be followed. This guidance relates to matters such as peatlands, thin soils, landforms, waterbodies, etc.

¹

<https://www.gov.scot/publications/scottish-government-response-grouse-moor-management-group-recommendations/>

²

<https://www.nature.scot/doc/naturescot-research-report-1302-reviewing-assessing-and-critiquing-evidence-base-impacts-muirburn>

³ <https://www.scottishfiredangerratingsystem.co.uk/project/overview>

⁴ <https://www.nature.scot/doc/guidance-muirburn-code>

Unfortunately, there are lots of examples where muirburn has been undertaken in a way that 'should not' have happened i.e., even if the legal obligations were met, good practice was not. The RSPB's report on muirburn⁵ highlights examples of muirburn taking place in ways that go against the Muirburn Code with burning on steep slopes, through regenerating woodland, through bird of prey nest sites and so on.

Part of the issue with the Muirburn Code appears to be that it is essentially an industry-led code of practice. Better regulation offers the opportunity to give ownership of the Code of Practice to Scottish Ministers. If the Code of Practice is government or licensing authority 'owned' it can be a stronger mechanism for driving adherence to good practice.

5) Protecting peatlands

Peatlands are an incredibly important resource in Scotland. They cover 20% of the land area and because approximately 80% of that area is degraded in some way, they are a major source of greenhouse gas emissions (with burning being one element of why peatlands are degraded and releasing so much carbon). In 2019, peatlands released 6.34 MtCO₂e. Note that in 2020 the Agriculture sector released 7.4 MtCO₂e, the Residential sector released 6 MtCO₂e and the Energy Supply sector released 5.3 MtCO₂e. Consequently, everything must be done to bring our peatlands into better health if we are to meet our emission reduction target.

Our peatlands have been damaged over time by drainage, grazing, burning and afforestation. As a result of burning, our peatlands have become drier than they should be. This leads to significant long-term changes in vegetation with a higher cover of fire resistant dwarf shrubs such as heather and to a reduction in peatland function and the loss of carbon to the air. The IUCN Peatland Programme takes the view that there is consensus, based on the current body of scientific evidence, that burning on peatland (especially blanket bog and wet heath) can result in damage to peatland species, microtopography and wider peatland habitat, peat soils and peatland ecosystem functions⁶ - further reducing their sequestration capacity and turning them into sources of greenhouse gas emissions. They highlight that healthy peatlands do not require burning for their maintenance.

At present, the importance of peatlands is already recognised in the Peatland Code. The code says that burning should not take place on peat that is deeper than 50cm. However, as we have pointed out, this is stipulated in a largely voluntary code of practice that is poorly policed and hard to enforce. Given the importance of peatland in our efforts to reach net zero, a stronger regulatory framework to protect peatlands is not unreasonable.

There is ongoing scientific debate about burning and peatlands and some may use that debate as a way of arguing for the retention of the status quo. Due to the need to manage land more sustainably and its role in helping to meet emission reduction targets, the status quo is not an option. A precautionary approach to protecting peatlands is reasonable and better protection of our peatlands through stronger regulation is justified. Indeed the Continuity Act requirement to adhere to EU Environmental Principles (not yet in force, but there is "interim guidance" to ScotGov as to how to comply) suggests that this approach is in line with the broad governmental intention to remain aligned with EU standards.

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https://www.rspb.org.uk/globalassets/downloads/nature-recovery-plan---scotland/rspb-scotland_report_muirburnlicensing_oct2021.pdf

6

<https://www.iucn-uk-peatlandprogramme.org/sites/default/files/header-images/Resources/IUCN%20UK%20PP%20Burning%20and%20Peatlands%20Position%20Paper%202020%20Update.pdf>

Q8. Do you agree with the proposed licensing system for muirburn (sections 9-19)?

SCCS would like to make the following points:

Purposes for muirburn (Section 10 (2)) – we are concerned that the inclusion of the control of wildfire in the list of purposes potentially creates a loophole that could effectively allow the continuation of the status quo.

Preventing wildfire is arguably a legitimate purpose, but how will Ministers ensure that this reason is only used when absolutely necessary and does not become the default purpose?

Under the current proposals a land manager could apply for a licence to burn on land that is not peatland for the purposes of game or livestock management within the muirburn season. They could also apply for a licence to burn on land that is not peatland outside of the season if the purpose was to restore nature, prevent wildfire or undertake research. Where the land is peatland, a land manager could apply for a licence to burn at any time if the purpose was to restore nature, prevent wildfire or undertake research.

In some respects, this is not a massive change because there is already a licensing system for out of season muirburn, but the inclusion of the specific purpose of preventing wildfire raises concern. The reason for this concern is that while land managers have traditionally undertaken muirburn to better support grouse numbers for shooting or for livestock, in recent years this activity has been re-framed so that the narrative is that their burning is also about preventing wildfire. Will wildfire prevention become a primary purpose and result in the maintenance of the status quo?

We acknowledge that Section 11 allows Ministers to grant licences only if they consider it appropriate to do so and having regard to the applicant's compliance with the Muirburn Code. Where the land is peatland, Ministers also have to be satisfied that muirburn is required for that purpose and that no other form of vegetation control is required.

But this effectively puts a great deal of weight on Scottish Ministers' licensing system because decision makers will need to be able to judge whether or not the application has merit. They will need to have a clear case by case understanding of the wildfire risk. But if the licensing regime is not properly resourced to be able to make these decisions it is possible that the licensing system will not robustly achieve the aims of the legislation i.e. strengthen regulation around muirburn. The key point is that this approach will only really work effectively if the licensing authority is properly resourced to deliver the regulatory framework being created.

Full cost recovery (Section 10 (3) (c)) – This concern that the delivery of the intention of the legislation depends on the effective operation of the licensing regime leads to concerns about the proper resources of the system. Section 10 (3) (c) refers to payment of a reasonable fee but should refer to full cost recovery.

Contents of muirburn licences (Section 12) – This section says that a licence must include reference to whom it is granted and the land to which it applies, and areas of peatland must be identified. It should also require that other possible constraints on burning should be included, for example, nest sites and other areas that should not be burned such as steep slopes, woodland etc.

Section 12 stipulates that the person to whom the licence is issued must 'have regard to' the Muirburn Code. This is too weak. The person to whom the licence is issued must comply with the Muirburn Code.

Definition of peatland (Section 18) – The principle that peatlands should be protected is already embedded in the Muirburn Code, which was effectively developed by land managers in the Moorland Forum. The current Code states that burning should not happen on peatlands (where peat is defined as an organic soil, which contains more than 60 per cent organic matter and exceeds 50 centimetres in thickness).

The reduction of the depth to 40cm is an attempt to increase the area of peatland protected from muirburn, which is welcome, but it is effectively a political compromise where the government has gone for a figure between the status quo and what many in the environment lobby have been calling for.

It is important to note that the UK Peatland Strategy says:

“Internationally, there is a growing consensus of the definition of peat soils as being organic carbon rich soils with a depth exceeding 30 cm. In line with international consensus, this strategy defines peat as: “A wetland soil composed largely of semi-decomposed organic matter deposited in-situ, having a minimum organic content of 30% and a thickness greater than 30 cm”.

While it is important to remember that peat can accumulate at very shallow depths and that depth definitions like this could effectively designate those areas as ‘not peatland’ (with perverse consequences), if a depth criterion is required in this legislation it should align with the international consensus and UK Strategy of 30cm.

To be clear, however, we would like to emphasise that defining peatland in the Bill through a specific depth definition should only serve to define peatland for the purposes of this Bill. This depth definition should not be taken to apply more generally for other purposes. This is important because depth definitions can have a useful function, but if applied in other contexts they can have perverse consequences. Research in relation to the carbon balance and relationship between peatland restoration and woodland creation may need a different approach and generic depth definitions may not work in that context. SCCS would encourage the Committee to satisfy itself about the extent to which the definition of peatland in this Bill will only apply to this Bill.

Stop Climate Chaos Scotland
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