WELSH STATUTORY INSTRUMENTS

2008 No. 1081 (W.115)

AGRICULTURE, WALES

HILL LANDS

The Heather and Grass etc. Burning (Wales) Regulations 2008

Made - - - -	*14 April 2008*
Laid before the National Assembly for Wales - -	*15 April 2008*
Coming into force - -	*6 May 2008*

The Welsh Ministers, in exercise of the powers conferred by section 20(1) of the Hill Farming Act 1946(**1**) and now vested in them(**2**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Heather and Grass etc. Burning (Wales) Regulations 2008.

(2) These Regulations come into force on 6 May 2008 and apply in relation to Wales.

Interpretation

2. In these Regulations—

"burning notice" ("*hysbysiad llosgi*") has the meaning given to it in regulation 8(1);

"burning season" ("*tymor llosgi*") means—

(a) in relation to land which is within an upland area, the period from 1 October in one year to 31 March in the following year, both dates inclusive; and

(b) in relation to land which is not within an upland area, the period from 1 November in one year to 15 March in the following year, both dates inclusive;

"railway land" ("*tir rheilffordd*") means land forming part of any operational railway;

"specified vegetation" ("*llystyfiant penodedig*") means heather, rough grass, bracken, gorse or vaccinium;

(**1**) 1946 c. 73.

(**2**) In relation to Wales, the functions of the Minister were transferred to the National Assembly for Wales by virtue of Article 2 of and Schedule 1 to S.I.1999/672. By virtue of sections 58 and 162 of and paragraphs 26 and 30 to the Government of Wales Act 2006, these functions are now vested in the Welsh Ministers.

"upland area" ("*ardal ucheldirol*") means any area of land shaded pink on the two volumes of maps numbered 1 and 2 , each volume being marked "Volume of maps of less favoured farming areas in Wales", dated 20 May 1991, signed by the Secretary of State for Wales and deposited in the Library of the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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.

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) the person has prepared a burning plan and is proposing to burn in accordance with the provisions of that plan;

(b) 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;

(c) the person 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; and

(d) the person 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 the intention to burn—

(i) to any other person who has an interest in that land either as owner or occupier, and

(ii) except in the case of any burning carried out on railway land, to any other person whom is known, or could with reasonable diligence have been discovered, to be in charge of any land adjacent to that on which the burning is to take place.

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 the Welsh Ministers 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, the single or combined areas being each 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, the single or combined areas being each 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" ("*llecyn o bridd moel*") means an area of soil of which no more than 2% is covered by vegetation or plant litter;

(b) "watercourse" ("*cwrs dŵr*") 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 the Welsh Ministers for a licence permitting the applicant 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 the Welsh Ministers 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) The Welsh Ministers may grant a licence only if they are satisfied that the proposed burning is to be carried out in accordance with the provisions of a burning plan prepared by the applicant and 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 the Welsh Ministers decide—

(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,

they must notify the applicant in writing of their decision and of the reasons for it.

Burning notices

8.—(1) If the Welsh Ministers believe that specified vegetation has been burnt in contravention of these Regulations, they may serve a notice (a "burning notice") on the occupier of the land concerned requiring the occupier to notify the Welsh Ministers, in the manner specified by the Welsh Ministers