

Hill Farming Act 1946 (as amended)

Application to undertake muirburn out of season

Guidance notes for applicants

In order for any licence application to be processed as quickly as possible it is important that the information requested is provided on the application form. This guidance outlines the type of information that should be provided in a licence application to undertake muirburn out of season.

If there is any supporting information, a paper copy should be included with your application. **or you can email an electronic version to LICENSING@snh.gov.uk.**

1. Introduction

This guidance is intended to assist applicants to complete an application for a licence to carry out muirburn outwith the legal season. The muirburn season consists of the standard season and the extended season and runs from 1 October in any year to 30 April in the following year. The muirburn season exists to ensure that muirburn is only carried out during the time of year when the potential benefits are maximised and the potential to damage economic, social, and environmental interests is minimised.

There may, however, be exceptional circumstances where muirburn is required for a specific purpose outwith the muirburn season (i.e between 1 May and 30 September), and that specific purpose can not be achieved by burning within the muirburn season. Therefore a procedure for allowing such muirburn to be carried out under licence was introduced from 1st August 2011. The application process and associated guidance was revised in 2012.

2. Legislative background

The power to grant, modify and revoke licences to make muirburn outwith the muirburn season was conferred on Scottish Ministers by the Wildlife and Natural Environment (Scotland) Act 2011. Scottish Ministers have delegated this power to Scottish Natural Heritage.

The legislation amends the Hill Farming Act 1946, and sets out specific purposes for which licences can be issued. These are:

- a) conserving, restoring, enhancing or managing the natural environment;**
- b) research; or**
- c) public safety.**

Note that licences cannot be issued for any other purpose.

Among other things, a licence can specify the land on which muirburn can be made, by whom, and conditions to which the licence is subject. Obtaining a licence to carry out muirburn outwith the muirburn season does not absolve the licence holder from complying with other relevant legislation.

3. Applications for licences during the period 01 May to 31 July

Burning carried out during this period could adversely affect moorland breeding birds. Reckless or intentional killing or injuring of a wild bird or damaging or destroying nests or eggs is an offence under the Wildlife and Countryside Act 1981. Disturbance of some sensitive bird species while they are nesting is also an offence. Therefore any licence application for muirburn during this period will also be assessed under the terms of the licensing provisions of the Wildlife and Countryside Act. Applications for a licence to make muirburn during this period will require a particularly strong justification, and any licence granted would cover activities under both Acts (note that there is no need for two applications).

If burning might affect particularly sensitive or rare bird species then a licence might not be granted. Guidance on the species concerned and situations where they might be present can be found in Annex A.

4. How to apply for a licence

The Application form for Licensed out of season muirburn is available at:
<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/muirburn-licensing/>

5. The evidence and information we need to be able to grant a licence

In general, burning outwith the muirburn season is more likely to have adverse economic, social or environmental impacts than burning within the muirburn season. The existence of the muirburn season, most recently endorsed by the Scottish Parliament by the passing of the 2011 Act, is a recognition of this.

Therefore, if your licence application is to be successful, it will be expected to show that the aim of the application can be achieved, and that the benefits of burning out of season outweigh the disbenefits and risks. As an example, it is sometimes suggested that burning heather infested by heather beetle in mid to late summer when larvae are active could be a method of reducing future infestation, but research evidence to support this is lacking. Therefore, we could issue a licence for a *bona fide* research proposal to investigate this. We would not issue a licence for an application that asserts that the purpose is to reduce heather beetle infestation without sound evidence of efficacy or a robust research proposal attached to it.

The application must clearly demonstrate that it fits one of the licensable purposes above (Section 2 a, b, or c). It must relate to exceptional circumstances where the licensable purpose can only be achieved by burning in the period from 1 May to 30 September in any year, and where the specific purpose cannot be achieved by burning within the muirburn season. It must show that there is no satisfactory alternative. An application to carry out rotational muirburn for heather management outwith the muirburn season because it was not carried out before the end of the previous muirburn season will not meet this test. This is

because the aims of the proposed muirburn can be achieved by burning within a future muirburn season.

6. The licensing process

We aim to process all applications within 20 working days of receipt of all appropriate information. Licence applications will be assessed by our upland specialists in consultation with staff in our area offices.

Except in the case of some types of application related to public safety, it is envisaged that applications will relate to projects which will have been planned well in advance of when the muirburn is required to take place. Early submissions of such applications, or informal enquiries prior to submission, will reduce the likelihood of any delay caused by the licensing process.

SNH may require a site visit to help us assess a licence application. This is so that we can check the appropriateness of granting a licence. We may also need to visit to check compliance with the conditions of a licence that has been granted. We will try to ensure that any access is convenient to both parties.

If the proposed muirburn is to take place on a Site of Special Scientific Interest (SSSI) we will consider the impact of the burning on the protected features of the SSSI. If a licence is granted, you will not need to apply for a separate SSSI consent. For proposals on or affecting Natura sites (SACs or SPAs), we will have to carry out additional assessments of the potential impacts of the proposed muirburn. If it may affect a Scheduled Ancient Monument we will consult Historic Scotland.

There may be circumstances (e.g. in a research project on the effects of muirburn on heather beetle) where the nature of the desired muirburn is known (e.g. size, number and vegetation type of patches, estate where it is to be carried out) but the precise location and timing of the muirburn is not known due to the unpredictability of outbreaks. Where this is the case, we recommend that you discuss the principles of your muirburn proposal with us well in advance (i.e. without the timing and precise location details). This will speed up the consideration of your application, which can be submitted once the timing and precise locations are known.

You can submit an application that covers more than one period. For example this could be for a burn in each September of more than one year.

7. Conditions

We will apply conditions to any licence granted. These are likely to include:

- You must allow SNH access to the land which is the subject of this application in order to check compliance with the licence. We will try to ensure that any access is convenient to both parties.
- You must comply with all recommendations of the most recent version of the Muirburn Code except where this licence provides for departures from the Code.
- You must complete a Licence Return form in respect of any licence granted and send it back to SNH once you have carried out your work. Where there are conditions which apply beyond the immediate carrying out of the muirburn (for example where the licence application relates to a 3 year project to assess the impacts of September

8. Additional guidance

A risk assessment should be completed for the prescribed burning operation. Your risk assessment should cover the risk to all relevant assets and values (e.g. people, property, agriculture, forestry, habitats, species, soils, archaeology), and identify and assess control measures and residual risk. There should be sufficient competent fire control personnel and equipment (including at least a vehicle-mounted fogging unit) to control the fire should it escape. It is recommended that you participate in a Wildfire group or make other arrangements for obtaining assistance should it be required. It is not essential to submit your risk assessment as part of this application.

You should consult with all others with a legal interest in the land, and obtain agreement where required. It is your responsibility to establish whether you need formal agreement from any other parties. This might include owners, sporting tenants and grazing tenants.

You should ensure that your application is consistent with any public funding attached to the land. For example, that it is compatible with any payments you receive under the Scotland Rural Development Programme or SNH Management Agreements.

9. Additional guidance for completing the application form.

| Section and Question | Guidance |
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| Section D - Impacts | |
| Apart from timing are there any other aspects of the proposed muirburn that would be at variance with the provisions or recommendations of the Muirburn code? | Give details of any other ways in which the proposed muirburn would be incompatible with the Muirburn Code if it were carried out within the muirburn season. For example <i>It is intended to burn an area of uneven-aged heather in order to promote woodland regeneration</i> . Note that not complying with a recommendation will not necessarily preclude the issuing of a licence. |
| Part 2 – The proposed burning operation * | A comprehensive Prescribed burning plan, covering a range of issues, such as fire intensity and severity required to achieve the desired objectives, weather and fuel conditions in which fires will be lit, ignition pattern, etc. is a useful tool preferred by some land managers. If you submit a Prescribed burning plan you must ensure that it includes all the information sought in Part 2 of the Application form. Links to examples of Prescribed burning plans, on which your plan can be based, can be found below in the “Links” section. |
| Section F – Location and land details | |
| Maps | The map or plan must be of sufficient quality and contain sufficient detail for someone unfamiliar with the area to be able to identify the proposed burning locations. It must include information which allows the location to be identified (eg grid lines annotated with eastings and northings or a point annotated with a grid reference), a scale, and either grid lines or a scale bar. 1:10000 or 1:25000 scale maps are preferred. |
| Habitat types to be burnt | Where necessary, SNH will attempt to supplement the information |

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| | provided with other existing sources of information, or through a site visit. Although detailed information is not likely to be expected unless it is known that the area is important for particular habitats, it is possible that in some circumstances a vegetation survey may be required. For example, if you are proposing to burn several areas in a complex mosaic of habitats, one or more of which may be fire-sensitive. |
| Notable species | <p>In particular, you should identify: 1) protected species which are known to be resident in or around the area; 2) protected species known to use the area for breeding or foraging; or 3) scarce or sensitive plant species known to be present; which may be affected directly or indirectly by the proposed muirburn. As well as your own knowledge of the area, there may be other sources of information available. For example, local Raptor Study Groups or the RSPB might be able to supply information about breeding birds which could be affected. Where necessary, SNH will attempt to supplement the information provided with other existing sources of information, or through a site visit. Although detailed information is not likely to be expected unless it is known that the area is important for particular species, it is possible that in some circumstances a survey may be required. For example, if records indicate the presence of a potentially sensitive species, but are imprecise about its location.</p> <p>For burning during the bird breeding season (1st May to 1st August) applicants should refer to Annex A for further information.</p> |
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| Section H – Timing and Environmental conditions | |
| When do you wish to carry out the proposed muirburn? | <p>In identifying the period during which you wish to carry out the muirburn, you need to achieve a balance between allowing a long enough period to ensure that suitable conditions are likely to occur, and not making that period so long that it might extend into a period when the impacts of burning might be different (e.g. into a period when a species known to use the area could be vulnerable to muirburn). In general, if you apply for a period of more than 28 days, it may be difficult for the licence to be granted. If you wish to apply for a licence covering more than one year, this should be indicated.</p> <p>If circumstances such as weather conditions preclude the muirburn being carried out for the duration of an issued licence, it may be possible to “fast-track” a renewal (say one week before expiry of the original licence) for cases where this is justified.</p> |
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10. Useful links

The Muirburn Code

<http://www.scotland.gov.uk/Publications/2008/04/08154231/0>

Prescribed burning on Moorland: Supplement to the Muirburn Code: A Guide to Best Practice

<http://www.scotland.gov.uk/Publications/2001/09/10016/File-1>

There are many more useful sources of information, including web links, listed in the Muirburn Code and Supplement.

The Scottish Outdoor Access Code

<http://www.outdooraccess-scotland.com/outdoors-responsibly/access-code-and-advice/soac/>

Prescribed burning and prescribed burning plans. Note that these documents provide useful examples of Prescribed burning plans, but are not suitable for use directly as templates. You will need to modify to suit your own circumstances and to meet the requirements set out in Part B of the Application form.

Tasmania Fire Service Burning Plan

http://www.fpa.tas.gov.au/fileadmin/user_upload/PDFs/Smoke_Managment/Appendix_1_TFS_Burning_Plan.pdf

The Nature Conservancy (US) Fire Management Manual (includes Standard prescribed burn plan form)

<http://www.tncfiremanual.org/burnplan.HTM>

Prescribed burning - Indiana Division of Fish and Wildlife

<http://www.in.gov/dnr/fishwild/files/HMFSPrescribedBurn.pdf>

Interagency prescribed fire - Planning and Implementation Procedures Guide (US)

<http://www.fs.fed.us/fire/fireuse/rxfire/rxfireguide.pdf>

Annex A - Muirburn during the bird breeding season

Background

Undertaking Muirburn during the bird nesting season has the potential to result in the destruction of nests and eggs of wild birds or to disturb sensitive breeding birds nearby. These activities are potentially offences under the Wildlife and Countryside Act. Therefore, where applications are received to undertake Muirburn between 1st May and 1st August (when breeding birds may be present), we need to ensure that impacts on breeding birds are minimised and that potential offences can be covered by any licence granted.

This document covers the type of information we expect applicants to provide in these circumstances, and describes how we will assess licences. This Annex is a summary of our guidance document, '*Undertaking muirburn during the bird breeding season*', which can be found on our website at:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/muirburn-licensing/>

Key species and habitats

SNH considers that those species for which out-of-season muirburn would pose most risk are **hen harrier, merlin, golden eagle, peregrine, black grouse, dunlin, ring ouzel and twite**.

These birds are most likely to be found in the following key habitat types;

- Heather 30-70cm tall
- Gullies with heather, bracken or trees
- Wet flushes, pools or mires
- Crags, cliffs and ledges

Therefore if you are proposing to burn areas of these habitats or burn close to them during the bird breeding season, we would expect objective evidence to demonstrate that they are not present. Additionally, if you already know that these species are present or likely to be present in the area, this should be indicated on the application form.

*Information on likely disturbance distances from nests of sensitive birds can be found [here](#)

Under what situations would we **not** support an application?

Where these key species are present or could be affected we would be unlikely to grant a licence. However, assuming that the application meets the other criteria for out-of-season muirburn we may be able to licence the work after the breeding season.

Summary

Where applications are received for burning during the bird breeding season we will expect applicants to provide the following information for the area of the burn and in the vicinity of it;

- Details of any of the key species that they are aware of in the area.
- Details of whether any of the key habitats above will be affected directly or indirectly
- If any of those key habitats are to be affected, the results of any survey carried out

This information should be provided in Section F of the licence application form.

Please note that we do not require a separate licence application to cover impacts on breeding birds.