

## **HEATH BURNING ACT 2003**

### **Chapter 15**

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## AN ACT

to make fresh provision for heath burning and  
for the management of heathland.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

### **1. Registration of heathland**

In the interests of good heathland management the Department may decide to enter particulars of the heathland on a register maintained at its offices for that purpose and the Department shall have power to amend or delete such particulars (a "registration decision").

### **2. The Register**

- (1) The register —
  - (a) may be kept otherwise than in documentary form; and
  - (b) shall include a map on which shall be indicated the location of the heath.
- (2) The Department shall allow any person to inspect the register at its offices free of charge during normal office hours and to take a copy of any entry contained therein, and of any relevant extract from the map referred to in subsection (1)(b), at such reasonable charge (if any) as the Department may determine.

**3. Considerations, notices and reviews**

(1) In considering whether to enter, amend or delete particulars of heathland on the register the Department may take into account —

- (a) the preponderance and value of heath vegetation;
- (b) any respect in which the heathland contributes to the environment of which it forms part;
- (c) the provision of a sustainable and varied ecology and habitat for wildlife;
- (d) the provision of sustainable food sources for livestock and game;
- (e) the desirability of its conservation, on the ground of archaeological or historic evidence within its humic layers; and
- (f) such other considerations as appear to the Department to be in the interests of good heathland management.

(2) Before entering particulars of any heathland on the register, or amending or deleting particulars of any heathland on it, whether under subsection (1) or (4), the Department shall consult such persons as appear to it to have special knowledge of, or interest in, the heathlands of the Island.

(3) As soon as practicable after particulars of any heathland have been entered on the register, or the particulars have been amended or deleted, the Department shall serve a notice on the owner and the occupier of the land comprising the heathland stating that such particulars have been entered, amended, or deleted on the register (a "registration notice").

(4) The owner or occupier of the land comprising the heathland, particulars of which have been entered, amended or deleted on the register may apply in the prescribed manner to the Department for a review to restore, amend or delete the particulars of the heathland on the register.

(5) Upon a determination of a review under subsection (4) the Department may confirm, restore, amend or delete the particulars on the register made the subject of the review (a "review decision").

**4. Restriction on burning or destruction of heaths**

(1) No person shall set fire to or destroy any registered heathland without a licence granted by the Department under this Act.

(2) Any person who contravenes subsection (1) or causes or permits another to contravene that subsection, is guilty of an offence and liable —

- (a) on summary conviction to a fine not exceeding £5,000,
- (b) on conviction on information, to a fine.

(3) A person shall be deemed to have committed an offence under subsection (2) if vegetation growing upon registered heathland is set on fire or

destroyed through the act, neglect or default of such person, notwithstanding that such person did not intend to commit such action.

(4) In proceedings for an offence under this section it shall be a defence to prove that the action in question was taken in the exercise of a right, or in the performance of an obligation, conferred or imposed by an enactment other than this Act.

## **5. Application for and grant of licence**

(1) An application for a licence shall be made to the Department in writing by a person having such interest in the registered heathland as enables him, with or without the consent of another, to undertake the burning or destruction of the registered heathland for which the licence is sought.

(2) On an application for a licence the Department may make a licensing decision —

- (a) to grant the licence subject to such conditions as the Department may consider expedient in the interests of good heathland management; or
- (b) to refuse the licence.

(3) Before refusing a licence, or granting it subject to conditions, the Department shall —

- (a) consult such persons or bodies of persons as appear to it to have special knowledge of, or interest in, the heathlands of the Island;
- (b) consider any written representations made by the applicant;
- (c) notify the applicant of its intentions and, if he so requests in writing, give him an opportunity of making oral representations to a person appointed by the Department for that purpose; and
- (d) if the applicant makes representations in accordance with paragraph (c), consider the report of the person so appointed.

(4) Where the Department refuses a licence, it shall notify the applicant of its reasons for doing so.

(5) A licence —

- (a) shall be in writing;
- (b) shall specify —
  - (i) the registered heathland to which it relates,
  - (ii) the conditions subject to which it is granted; and
- (c) shall remain in force for such period as may be specified.

(6) A condition subject to which a licence is granted shall remain in force until it is complied with, notwithstanding the expiry of the period specified under subsection (5)(c).

(7) If any person —

- (a) sets fire to or destroys vegetation upon registered heathland in pursuance of a licence, and
- (b) fails to comply with a condition subject to which the licence was granted,

he shall be guilty of an offence and liable —

- (i) on summary conviction to a fine not exceeding £5,000,
- (ii) on conviction on information, to a fine.

## **6. Action to prevent heath burning or destruction**

- (1) Where it appears to the Department that —
  - (a) a person intends to burn or destroy vegetation upon registered heathland, and
  - (b) a licence may be required therefor,

the Department may serve on him a stop notice in writing prohibiting the burning or destruction of the vegetation upon such registered heathland until the stop notice is withdrawn or the expiration of 14 days beginning with the service of the notice, whichever is the sooner.

(2) Without prejudice to section 4, if any person on whom a stop notice has been served contravenes the notice, or causes or permits another to contravene the notice, he shall be guilty of an offence and liable —

- (a) on summary conviction to a fine not exceeding £5,000,
- (b) on conviction on information, to a fine.

(3) Without prejudice to subsections (1) and (2), if it appears to the Department that —

- (a) a person intends to burn or destroy vegetation upon any registered heathland, and
- (b) a licence may be required therefor, and
- (c) action under subsection (1) is unlikely to be effective,

the Department may apply to the High Court for an injunction restraining him or any other person specified in the application from so doing.

(4) The Court may, on an application made under subsection (3) grant an injunction and/or make such other order, on such terms, as it thinks just and expedient.

## **7. Rehabilitation of registered heathland**

(1) Where vegetation upon any registered heathland has been burnt or destroyed without a licence in circumstances in which a licence is required by section 4 or a condition attached to such a licence has been breached, the Department may serve on the occupier of, or any person having an interest in,

the registered heathland a rehabilitation notice containing any of the requirements mentioned in subsection (4).

(2) Without prejudice to section 4, but subject to section 8, if any person on whom a rehabilitation notice has been served is in contravention of the notice, or causes or permits another to be in contravention of the notice, he shall be guilty of an offence and liable —

- (a) on summary conviction to a fine not exceeding £5,000,
- (b) on conviction on information, to a fine.

(3) If any person is convicted of an offence under subsection (2), the Department may itself execute the requirements contained in the relevant rehabilitation notice and recover from that person the expenses incurred by it in so doing.

- (4) The requirements referred to in subsection (1) are —
  - (a) to carry out such works preparatory to heathland rehabilitation as may be specified in the notice;
  - (b) to seed with or plant on the registered heathland such plants of such species or description, and within such time as may be specified; and
  - (c) to carry out such works for the protection and care of the registered heathland under rehabilitation, and for such period, as may be specified.
- (5) The Department may —
  - (a) withdraw a rehabilitation notice served under subsection (1);
  - (b) vary or waive a requirement imposed under subsection (1); or
  - (c) extend the period for compliance with any such requirement.

## **8. Appeals**

(1) The owner or occupier of, and any other person having an interest in land comprising the heathland who is aggrieved —

- (a) by a review decision taken by the Department —
  - (i) to enter particulars of any heathland on the register;
  - (ii) to amend particulars of any heathland on the register;
  - (iii) to delete particulars of any heathland on the register; or
- (b) by a licensing decision taken by the Department —
  - (i) to grant a licence;
  - (ii) to refuse a licence;
  - (iii) to impose any condition upon the granting of a licence; or
  - (iv) to rescind a licence; or

(c) by the service of a rehabilitation notice under section 7(1), may appeal to the Tribunal established under this section in such manner as may be prescribed.

(2) A hearing of the Tribunal will be held in public unless the applicant requires it to be held in private, however the Tribunal may determine that notwithstanding the request of the applicant, it is in the public interest for the proceedings to be held in public.

(3) Applicants may appear in person or by their approved representative.

(4) The Tribunal may confirm, vary or reverse the decision of the Department.

(5) The Department shall give effect to a decision of the Tribunal under this section by making such alterations to the register as may be necessary and by granting or refusing a licence or by imposing or amending conditions on a licence.

(6) The Tribunal shall consist of —

(a) a chairman who shall be the High Bailiff; and

(b) one member who shall be nominated by the Scientific Advisory Committee established by section 3 of the Endangered Species (Import and Export) Act 1981<sup>1</sup>; and

(c) one member who shall be nominated by the Manx National Farmers Union; and

(d) one member who shall be nominated by the Manx Game Preservation Society.

(7) The term of office of a Tribunal member (other than the High Bailiff) shall not exceed 3 years.

(8) A member of the Tribunal whose term of office expires shall be eligible for reappointment.

(9) No defect in the appointment of a member of the Tribunal shall invalidate the proceedings of the Tribunal in which he may have taken part.

(10) An appeal from a decision of the Tribunal on a point of law shall lie to the High Court.

(11) Regulations shall make provision with respect to appeal procedures under this section.

## **9. Rights of entry upon land**

(1) Any person duly authorised in writing by the Department may at any reasonable time enter upon any land for any of the following purposes

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<sup>1</sup> 1981 c.3

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- (a) ascertaining whether an offence has been, or is being, committed under this Act;
  - (b) ascertaining whether any notice served or condition imposed under this Act has been complied with;
  - (c) surveying it in connection with any proposal to grant a licence, serve a notice or impose a condition under this Act;
  - (d) carrying out any works required under section 7(3).
- (2) If it is shown to the satisfaction of a justice of the peace that —
- (a) admission to any land has been refused, or
  - (b) refusal of admission is apprehended; or
  - (c) the land is unoccupied; or
  - (d) the occupier of the land is temporarily absent; or
  - (e) application for admission would defeat the object of the entry,

and there is reasonable ground for entry upon the land for a purpose mentioned in subsection (1), the justice may by warrant authorise a person authorised by the Department to enter upon the land, by force if need be.

(3) No warrant under subsection (2) shall be made on the ground mentioned in subsection (2)(a) or (b) unless the justice is satisfied that notice of the Department's intention to apply for the warrant has been given to the occupier.

(4) A warrant under subsection (2) shall continue in force until the purpose for which entry is necessary has been satisfied.

(5) A person authorised under this section to enter upon any land

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- (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
- (b) may take with him on to the land such other persons and such equipment as are necessary for the purpose in question;
- (c) shall not, if the land is occupied, demand admission to the land as of right unless notice of the intended entry has been served on the occupier not less than 24 hours before the demand;
- (d) shall, if the land is unoccupied when he enters or the occupier is temporarily absent, leave the land as effectually secured against trespassers as he found it.

(6) If a person intentionally obstructs another person in the exercise of a power conferred on the other person by this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

## **10. Offences**

(1) Proceedings for an offence under this Act shall not, without the consent of the Attorney General, be instituted otherwise than by the Department.

(2) In any such proceedings before a Court of Summary Jurisdiction the Department may appear by any officer authorised by the Department for the purpose.

(3) Proceedings for an offence under this Act may be brought within a period of 6 months from the date when the offence was discovered by the Department, but no such proceedings shall be brought more than 2 years after the commission of the offence.

(4) For the purposes of subsection (3), a certificate of the Chief Forestry Officer of the Department as to the date on which such evidence as is there mentioned came to his knowledge shall be conclusive evidence of that fact.

(5) When imposing any penalty for an offence under this Act, the Court shall have regard to any benefit accruing as a result of the offence to the person convicted.

## **11. Offences by bodies corporate etc.**

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) For the purposes of subsection (1), "body corporate" includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company's manager and registered agent.

## **12. Interpretation**

In this Act —

"the Department" means the Department of Agriculture, Fisheries and Forestry;

"good heathland management" means the management of heathland through the implementation of beneficial burning practices consistent with section 36 of the Wildlife Act 1990<sup>2</sup>;

"heathland" and "heath" mean open uncultivated ground characterised by a preponderance of low herbage and dwarf shrubs and in particular, the low herbage and dwarf shrubs included in the term "vegetation" defined in this section;

"licence" means a licence of the Department required by section 4(1);

"licensing decision" means a decision under section 5(2);

"the register" means the register maintained under section 2(1);

"registered heathland" means heathland particulars of which are entered in the register;

"registration decision" means a decision under section 1;

"registration notice" means a notice under section 3(3);

"rehabilitation notice" means a notice under section 7(1);

"review decision" means a determination under section 3(5);

"stop notice" means a notice under section 6(1);

"vegetation" means low herbage and dwarf shrubs and in particular Manx Gorse (*Ulex gallii*), Common Heather (*Calluna vulgaris*), Fine-leaved heath or Lesser Bell-heather (*Erica cinerea*) and Blaeberry (*Vaccinium myrtillus*).

### 13. Regulations and codes

(1) The Department may make such regulations as it considers are necessary or desirable to carry the provisions of this Act into effect.

(2) Without prejudice to the generality of that power, regulations may —

(a) make provision with respect to the entry, amendment and deletion of particulars on the register;

(b) prescribe the procedure for applications under section 3 for a review and for the determination of such applications and such regulations may make provision for the exercise of functions with respect to those matters;

(c) exempt any person or class of persons from any of the provisions of this Act.

(3) Regulations made by the Department under this section shall not come into operation unless they are approved by Tynwald.

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<sup>2</sup> 1990 c.2

(4) The Department may by order approve any code of practice issued (whether by the Department or not, and whether in the Island or elsewhere) for the purpose of —

- (a) giving practical guidance to persons engaged in agriculture and forestry with respect to activities which may be detrimental to registered heathland; and
- (b) promoting what appears to it to be desirable practices by such persons for avoiding or minimising damage to registered heathland.

(5) A contravention of a code of practice as for the time being approved under this section shall not by itself give rise to any criminal or civil liability; but if, in any proceedings whether civil or criminal it is alleged that a person has contravened a provision of this Act, a failure to comply with a code of practice that at that time was approved may be relied upon as tending to establish liability.

(6) An order under subsection (4) and a code of practice approved under the order shall be laid before Tynwald.

#### **14. Powers of the Department**

The powers conferred on the Department by this Act shall be in addition to and not in derogation from any powers of the Department conferred upon it by or under any other statutory provision.

#### **15. Repeals**

The enactments specified in the Schedule are repealed to the extent specified.

#### **16. Short title and commencement**

(1) This Act may be cited as the Heath Burning Act 2003.

(2) This Act shall come into operation on such day as the Department may by order appoint.

*Heath Burning Act 2003*

Section 15.

SCHEDULE  
ENACTMENTS REPEALED

| <i>Vol/Chapter</i> | <i>Short title</i>             | <i>Extent of repeal</i>  |
|--------------------|--------------------------------|--------------------------|
| XV p. 236          | Heath Burning Act 1939.        | The whole Act.           |
| 1982 c.6           | Statute Law Revision Act 1982. | In Schedule 1, entry 15. |
| 1986 c.1           | Fines Act 1986.                | In Schedule 2, entry 43. |