

[REDACTED]
Your Ref:

**Secretary of State for the
Environment, Food and Rural Affairs
DEFRA
c/o Government Legal Department
102 Petty France
Westminster
London
SW1H 9GL
United Kingdom**

2 October 2025

BY EMAIL
[REDACTED]
[REDACTED]
[REDACTED]

Dear Secretary of State

**PROPOSED CLAIM FOR JUDICIAL REVIEW: HEATHER AND GRASS ETC.
BURNING (ENGLAND) (AMENDMENT) REGULATIONS 2025**

1. We act for the Moorland Association, [REDACTED]
[REDACTED]
[REDACTED]
2. This letter concerns a proposed challenge to the legality of the Heather and Grass etc. Burning (England) (Amendment) Regulations 2025 (“**2025 Regulations**”), which were laid before Parliament on 9 September 2025, and which came into force on 30 September 2025.
3. The 2025 Regulations represent a significant change to the regulatory regime, appreciably expanding the ban on controlled burning and removing key grounds for applying for licences under that ban. The impact on the Claimants and their members is imminent and severe.
4. The Moorland Association represents landowners and managers responsible for over a million acres of moorland, as well as those who have naturalist, sporting and research interests in moorland. [REDACTED]
[REDACTED]
[REDACTED]
5. The expanded ban will curtail their ability to use controlled burning as a land management tool, undermining long established practices for mitigating the

ever-worsening risk of wildfire – a risk that fire and rescue services across the country regard as increasingly unmanageable.

6. The 2025 Regulations were made following a legally flawed consultation, and are procedurally and substantively irrational. Key evidence relied upon by the Secretary of State was not disclosed or consulted upon; material changes were introduced without any notice or consultation; and important consultation responses were wholly disregarded. The Department for Environment, Food & Rural Affairs (“**DEFRA**”) failed adequately to consider the comparative effectiveness of alternative land management practices, the practicalities of compliance, and the real-world impacts on wildfire risk. The 2025 Regulations are also incompatible with the Claimants’ rights under Article 1 of Protocol 1 to the European Convention on Human Rights.
7. This matter is urgent given that the 2025/26 burning season has started. The expanded restrictions, combined with delays in the licensing process, will likely amount to a *de facto* ban on controlled burning for the entire season, or at least the vast majority of it. This will irreversibly undermine the ability of land managers to mitigate wildfire risk and fulfil their obligations to manage the land responsibly in accordance with their stewardship agreements. The Claimants’ primary position is that the 2025 Regulations should be revoked. However, if the Secretary of State refuses to do that, the Claimants invite the Secretary of State to confirm that she will suspend the practical implementation of the 2025 Regulations pending determination of the proposed claim.¹ Alternatively, the Claimants seek the Secretary of State’s consent that the claim is expedited and ‘rolled-up’, to be heard by the end of the 2025 Michaelmas Term.

The Defendant

8. Secretary of State for Environment, Food and Rural Affairs (“**Secretary of State**”).²

The Claimants

9. The Moorland Association, established in 1986, represents landowners and land managers responsible for over a million acres of moorland across England and Wales. Its members have extensive experience and involvement in the stewardship of upland moors, balancing conservation, biodiversity, rural livelihoods, and traditional land management practices such as controlled

¹ This could be done by a number of mechanisms, including: by way of consent order; or by the Secretary of State confirming, for example, that she (i) will not enforce the 2025 Regulations in relation to land that *was not* previously caught by the Heather and Grass etc. Burning (England) Regulations 2021 (“**2021 Regulations**”); (ii) will extend licences granted under the 2021 Regulations for land that *was* previously caught; and (iii) will expedite licence applications for land that *was* previously caught by the 2021 Regs, but where the landowner did not have a licence under the 2021 Regulations. We would also be happy to consider any other proposal the Secretary of State may have.

² The Rt Hon Emma Reynolds MP was appointed on 5 September 2025, replacing the Rt Hon Steve Reed OBE MP. Nothing turns on this point for the purposes of this letter.

burning. A significant number of the Moorland Association's members have been affected directly and/or indirectly by the 2025 Regulations.³

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Defendant's reference details

13. The Secretary of State for Environment, Food and Rural Affairs c/o Government Legal Department, 102 Petty France, Westminster, London, SW1H 9GL, United Kingdom.

The details of the Claimants' legal advisers dealing with this claim

14. Legal Representatives: Mishcon de Reya LLP [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

15. Address of Legal Representatives: Africa House, 70 Kingsway, London, WC2B 6AH.

16. Phone Number of Legal Representatives: [REDACTED]

17. Reference: [REDACTED]

The details of the matter being challenged

18. The Claimants' challenge is to the 2025 Regulations.

The details of Interested parties

³ One of the Moorland Association's members, [REDACTED] has refrained from sending his own letter before action, consistent with the pre-action protocol exhortation in that regard, because he is content that the Moorland Association represents his interests, which substantially align with his written submissions in his attempted participation in the consultation.

19. In light of the matters raised by the proposed claim with regards to wildfire risk, and the specific concerns that were expressed by the National Fire Chiefs Council ("**NFCC**") in its consultation response (see §46.4 below), we consider that the NFCC should be named as an Interested Party. We will provide the NFCC with a copy of this letter to invite their comments on whether they agree with this approach.

The issues

Factual background

Increasing wildfire risks

20. The risk of wildfire across the UK's moorlands and peatlands is rising due to hotter and drier spells, longer summers and greater fuel loads (i.e. combustible vegetation) in heather-dominated landscapes. Wildfires are starting earlier and lasting longer. During extreme heatwaves, even typically moist live vegetation can dry out, creating conditions for wildfires.
21. This increased risk is a matter of scientific consensus. DEFRA's UK Climate Change Risk Assessment 2022 (published 17 January 2022)⁴ and Third National Adaptation Programme (published 17 July 2023 and last updated 21 February 2024)⁵ identified wildfire as an increasing climate change risk. In its most recent Progress Report (published on 30 April 2025)⁶ the Government's Climate Change Committee concluded that there was "*now unequivocal evidence that climate change is making extreme weather in the UK, such as heatwaves, heavy rainfall, and wildfire-conducive conditions, more likely and more extreme*" (p. 10).
22. Consequently, the increasing scale of wildfire risks is beginning to exceed the capacity of land managers and fire and rescue services to suppress them. According to the Global Wildfire Information System,⁷ there have been a record-breaking 114 fires in the UK this year so far, burning over 46,000 hectares. That is already double the area that was burned in the entirety of 2022, during which year the previous record number of fires was recorded. The NFCC has warned in its Wildfires Position Statement that wildfires have become an increasingly common and unmanageable challenge for Fire and Rescue Services across the country.⁸
23. This elevated wildfire risk inevitably gives rise to an increased risk to the lives and livelihoods of people living, working and otherwise using landscapes including moorlands and peatlands, as well as wildlife in these areas. It also puts

⁴ Available at <<https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-2022>>.

⁵ Available at <<https://www.gov.uk/government/publications/third-national-adaptation-programme-nap3>>.

⁶ Available at <<https://www.theccc.org.uk/wp-content/uploads/2025/04/Progress-in-adapting-to-climate-change-2025-1.pdf>>.

⁷ Available at <<https://gwis.jrc.ec.europa.eu/apps/gwis.statistics/estimates>>.

⁸ Available at <<https://nfcc.org.uk/our-services/position-statements/wildfires-position-statement/>>.

in greater danger members of the Fire and Rescue Service who are tasked with fighting wildfires when they break out.

24. Our clients have additional concerns arising from their obligations to manage the landscape in a way that avoids criminal and/or civil liability, including under:

24.1. section 3 of the Health and Safety at Work Act 1974, which requires organisations to ensure that their activities do not expose relevant persons, such as their own employees, members of the public, visitors, neighbouring landowners, to health and safety risks;

24.2. section 79 of the Environmental Protection Act 1990, which indicates that a statutory nuisance could arise from a wildfire that occurred as a result of negligent land management; and

24.3. the Regulatory Reform (Fire Safety) Order 2005, which regulates fire safety in non-domestic premises in England and Wales.

25. Accordingly, it is vital that those who own and are responsible for managing moorlands and peatlands mitigate the risk of wildfire by adopting proper and efficient land management practices.

26. DEFRA itself has a range of specific responsibilities in relation to mitigating wildfire risk across England. In 2018, the Home Office published a Wildfire Framework for England.⁹ The Framework identified DEFRA's responsibilities as follows:

"3.3 Department for Environment, Food and Rural Affairs (DEFRA)

3.3.1 Review land management inputs to manage fuel load in all parts of the country, including urban and rural areas, and the rural/urban interface.

3.3.2 Promote wildfire mitigation and adaptation planning to land managers including identification of management practices that will assist the emergency response to wildfire incidents.

3.3.3 With partners including Forestry Commission and Natural England, consider the impact of wildfire on the conservation status of land.

3.3.4 Impact of wildfire on carbon storage and emissions as part of the Climate Change Risk Assessment and National Adaptation Programme.

3.3.5 Impact of wildfire on delivery of Defra's 25-year Environment Plan, Clean Air Strategy, Peat Action Plan and Trees Action Plan.

⁹ Available at <https://fireengland.uk/sites/default/files/2021-12/211220%20Wildfire%20Framework%20for%20England.pdf>.

3.3.6 *Engage with Land Managers to coordinate pro-active public communications during periods of high wildfire risk.*

3.3.7 *Responsible for encouraging sustainable land management practices that mitigate against wildfire risk."*

Mitigating wildfire risk by means of controlled burning

27. Controlled burning (also referred to as 'managed burning', 'rotational burning' or 'cool burning') is a centuries-old land management tool used to manage moorland and peatland landscapes. One of its purposes is to mitigate the risk of wildfires. It reduces fuel loads and creates firebreaks across moorlands and peatlands, thereby reducing the risk of summer ignitions escalating into high-intensity wildfires.
28. Controlled burning is a well-established practice¹⁰. It takes place during the 'burning season', being the colder months of winter and spring, and is typically executed by experienced teams using specialist equipment and detailed wildfire management plans. It uses targeted and short-lived burns to consume surface vegetation while leaving the moss layer and peat surface intact and cool. This contrasts with summer wildfires, which can ignite peat and release centuries of stored carbon and pollutants.
29. Controlled burning is used alongside or instead of alternative wildfire mitigation practices, such as cutting and rewetting.¹¹ Although effective in some conditions, these alternative practices have significant limitations, especially in certain upland settings. In summary:
 - 29.1. Mechanical cutting can leave large amounts of dry brash on the surface, which may actually increase fire risk by providing a continuous, highly flammable fuel layer that is especially vulnerable to smouldering fires. For example, in a 2025 paper by Fielding et al, the authors found that burning removed fine fuels, potentially reducing future wildfire ignition sources, while "*cutting transferred attached fine heather material to life, which could serve as ignition sources for wildfires*".¹² Cutting can also cause physical damage to sensitive peat surfaces, and disrupt microtopography, while the use of heavy machinery on wet or uneven or rocky, ground is often impractical or impossible.

¹⁰ We note, for example, that in June 2025 (after the consultation but before the laying of the statutory instrument), the UK government signed the Kananaskis Wildfire Charter at the G7 meeting in Canada. That charter includes a commitment to "*take steps to prevent and mitigate the occurrence of wildfires by:....Implementing mitigation and adaptation actions ground in scientific research and local knowledge that reduce the risk of extreme wildfires such as.....controlled burning...*" [Kananaskis Wildfire Charter](#)

¹¹ Rewetting involves raising water tables, often by blocking drainage ditches, to restore the natural wetness of degraded peatlands.

¹² "The impact of moorland cutting and prescribed burning on early changes in above-ground carbon stocks, plant litter decomposition and soil properties", *Ecological Solutions and Evidence* (vol.6, 2025); available at <https://besjournals.onlinelibrary.wiley.com/doi/10.1002/2688-8319.70112>.

- 29.2. Rewetting, while beneficial for peatland restoration and carbon sequestration, is not a standalone solution for wildfire mitigation. In particular, during prolonged droughts or heatwaves, even rewetted peatlands can dry out and burn severely. For example, as Heinemeyer et al. conclude in a 2025 paper on heather management practices *“Overall, there is no direct evidence for the relationship between the rewetting of peatlands, cessation of prescribed burning and subsequent resilience of peatlands to wildfire. This statement needs measurements, trials and models to test if, where and to what degree rewetting provides resilience to wildfire.”*¹³
30. For these reasons, neither cutting nor rewetting can reliably replace the role of controlled burning in reducing fuel loads, creating firebreaks, and maintaining landscape resilience to wildfire, particularly under increasingly extreme climate conditions. Controlled burning remains a vital, evidence-supported tool for managing wildfire risk.
31. Indeed, many moorlands are managed in accordance with agri-environment agreements (with the Rural Payments Agency, an executive agency of DEFRA) and site management statements (issued by Natural England) which contain positive requirements to manage the land by means of controlled burning.

Restrictions on controlled burning

32. Controlled burning is tightly restricted and supervised in the UK.
33. Since 2007, controlled burning in England has been regulated by the Heather and Grass etc. Burning (England) Regulations 2007 (“**2007 Regulations**”). The Explanatory Memorandum to the 2007 Regulations recognises that controlled burning can be a beneficial practice when used with skill and understanding: see §7.3. The objective of the 2007 Regulations is to ensure that it is carried out safely and responsibly.
34. The 2007 Regulations seek to achieve this by (among other things):
- 34.1. restricting burning to a burning season of 1 October to 15 April in upland areas and 1 November to 31 March elsewhere;
 - 34.2. prohibiting burning between sunset and sunrise;
 - 34.3. requiring that sufficient personnel and equipment are present to control and regulate burns at all times; and
 - 34.4. establishing a licensing regime overseen by Natural England for controlled burning in areas of certain sizes, vegetation and location.

¹³ “Prescribed heather burning on peatlands: A review of ten key claims made about heather management impacts and implications for future UK policy”, *Mires and Peat* (2025); available at https://www.researchgate.net/publication/394499963_Prescribed_heather_burning_on_peatlands_A_review_of_ten_key_claims_made_about_heather_management_impacts_and_implications_for_future_UK_policy

35. Recognising that these restrictions were likely to have a significant effect on public and private interests, the Government carried out a detailed Regulatory Impact Assessment in relation to the 2007 Regulations. That assessment (at p. 13) recognised that controlled burning was a key mechanism for mitigating wildfire risk:

“Wildfires

30. *Generally, controlled burning is likely to reduce the risk of occurrence and impacts of wildfires. The main points are:*
- *there are hundreds of wildfires in England each year, mainly occurring in the warmer, drier months. Most are brought under control before they develop into major incidents, but a few cause major destruction to large swathes of land;*
 - *wildfires tend to be started by carelessness (e.g. in disposing of cigarettes) or arson. They are rarely caused by managed burns which go out of control, although this can occur;*
 - *many factors influence the occurrence, severity and extent of wildfires – including the amount of combustible material present; its relative dryness; and whether it is likely to burn relatively “hot and slow” (e.g. woody material like older heather) or “cool and fast” (e.g. most grasses). The extent of a fire will depend on factors such as wind speed and direction and the extent of combustible material;*
 - *generally, controlled burning reduces the risk of occurrence and severity of wildfires by reducing the amount of combustible material present, and making areas with large fuel loads more dispersed;*
 - *if burning were to cease on traditionally burned heather moorland (which, by design, tends to have high proportions of heather), over time the current patchwork of young and old heather would be replaced by swathes of old, woody heather. On such areas (unless the heather were managed in some other way) there would be a much increased risk that if a wildfire were to start, it could be very destructive over a large area.*
31. *Severe wildfires can damage habitats and soil on a far worse scale than controlled burns. They can cover large areas of many hundreds of hectares and more, and land may take many decades to recover economically and environmentally. They are also costly to bring under control, and restoration takes large amounts of time, effort and money over a long time scale. For instance, a large wildfire in 2003 at Fylingdales on the North York Moors cost approximately £50,000 in fire fighting costs alone. Meanwhile, a wildfire on Bleaklow Dark Peak in 1957 resulted in bare peat which endured for nearly fifty years before it was reseeded in 2004.*

32. *Wildfires also place burdens on the Fire Service and the Police, which reduces their ability to respond to emergencies elsewhere.”*

The ban on controlled burning in specified landscapes

36. In 2021, the Government introduced the 2021 Regulations, which implemented a more limited ban on unlicensed heather and grass burning in specified areas of land in response to concerns regarding the environmental impact of burning practices on ‘blanket bogs’ (i.e. land covered by a buried or ‘deep’ layer of peat).
37. Subject to limited exceptions, the 2021 Regulations prohibited burning on land which:
- 37.1. was both a Site of Special Scientific Interest (“**SSSI**”) and designated as a Special Area of Conservation (“**SAC**”) or Special Protection Area (“**SPA**”); and
 - 37.2. contained peat at a depth of more than 40cm (regulation 3(1), read together with regulation 2).
38. This prohibition applied unless the Secretary of State granted a conditional licence for “*prescribed burning*”, which they were empowered to do where expedient and necessary:—
- 38.1. for the conservation, enhancement or management of the natural environment for the benefit of present and future generations;
 - 38.2. for the safety of any person;
 - 38.3. to reduce the risk of wildfire; or
 - 38.4. because the specified vegetation is inaccessible to mechanical cutting equipment and any other method of management is impracticable (reg. 4(4)).
39. Any breach of the 2021 Regulations by unlicensed prohibited burning was and is a criminal offence.
40. As a result of this ban and the burden of applying for licences under it, there was a marked decrease¹⁴ in controlled burning in the specific areas of land covered by the 2021 Regulations. The Claimants understand that, to date, only 10 licences have been applied for and only three licences have been granted.

The Secretary of State’s proposals to extend the ban on controlled burning

¹⁴ An RSPB funded study said that there was a 73% reduction in areas being managed by burning or cutting in the immediate aftermath of the Natural England ban on burning imposed under the Burning (England) Regulations 2021. See “*Annual extent of prescribed burning on moorland in Great Britain*”: <https://zslpublications.onlinelibrary.wiley.com/doi/10.1002/rse2.389>. The model was unable to “*fully separate burning from cutting on moorland*” meaning that neither method of reducing fuel load was taking place in the 73% of land where excess vegetation was previously being managed.

41. On 31 March 2025, DEFRA announced its proposals to introduce a substantial expansion to the ban on controlled burning under the 2021 Regulations: Press Release, *New proposals to ban heather burning on peatland to protect air, water and wildlife* (published 31 March 2025).¹⁵ In particular, DEFRA proposed to:
 - 41.1. increase the areas of land covered by 66% by extending the coverage to any Less Favoured Area (“LFA”); and
 - 41.2. reduce the peat depth threshold on the land covered from 40cm to 30cm.
42. In its press release, DEFRA explained, among other things:
 - 42.1. that, “[i]f implemented, these changes will increase the area currently protected from 222,000 to more than 368,000 hectares of England’s total 677,250 hectares of deep peat, meaning an area equivalent to the size of Greater London, Greater Manchester and West Midlands put together will now be better protected.”
 - 42.2. that ‘supporting evidence’ had been published on the same day, including (i) a review published by Natural England: *The effects of managed burning on upland peatland biodiversity, carbon and water* (NEER155);¹⁶ and (ii) a map showing the extent and depth of England’s peatlands – the England Peat Map – that was being developed and would be published later in the spring.
 - 42.3. that under the expanded ban “[o]ne of the grounds to apply for a licence to burn will be to reduce the risk of wildfire, so we can balance environmental protection with practical land management.”

The consultation on the proposed expansion to the ban

43. DEFRA announced a consultation on these proposals running for just eight weeks, ending at 11:59pm on 25 May 2025, publishing a Consultation Document on the same day as its press release.¹⁷
44. Among other things, the Consultation Document:
 - 44.1. described the expanded areas of land covered as set out above (pp. 7-8);
 - 44.2. described the reduced peat depth threshold as set out above (p. 10);

¹⁵ Available at <<https://www.gov.uk/government/news/new-proposals-to-ban-heather-burning-on-peatland-to-protect-air-water-and-wildlife>>.

¹⁶ Noble, A., Glaves, D.J., Leppitt, P., Crowle, A., Key, D. and Rodgers, A. 2025. *An evidence review update on the effects of managed burning on upland peatland biodiversity, carbon and water*. Natural England Evidence Review, NEER155. Natural England. Available at <<https://publications.naturalengland.org.uk/publication/4548741850464256>>.

¹⁷ Available at <https://consult.defra.gov.uk/peatland-protection-team/heather-and-grass-burning-in-england/supporting_documents/Heather%20and%20Grass%20Burning%20Consultation%20Document.pdf>.

- 44.3. acknowledged that “[t]he precise extent of this increase will be determined by the ongoing England Peat Map Project”; and
- 44.4. confirmed that the grounds for licence applications would remain the same save that the ground based on inaccessibility to mechanical cutting would be removed (p. 11).
45. The Consultation Document did not identify the evidence on which these proposals were based.
46. DEFRA received a variety of consultation responses. The Claimants will seek disclosure of responses and will rely on their full contents in due course. For present purposes, the Claimants highlight the information and evidence provided by the following respondents, by way of illustrative example:
- 46.1. **The Moorland Association** pointed out (among other things) that:
- 46.1.1. the proposals were premature in circumstances where key research into the impact of controlled burning and other land management techniques, funded by National Environment Research Council (“**NERC**”) and carried out by a diverse group of academics comprising the IDEAL UK Fire Research Team, remained outstanding (pp. 4-5);
- 46.1.2. the proposed expansion to the ban would make uncontrolled and uncontrollable wildfires more likely and more dangerous (p. 15);
- 46.1.3. the new England Peat Map, which had since been published on 12 May 2025, indicated that the area of land within scope of the expanded ban was almost twice as large as DEFRA had stated when announcing the proposals (p. 16);
- 46.1.4. DEFRA had not presented enough evidence to prove that cutting, or any other method of vegetation management, was more sustainable than burning over a complete management cycle (p.17), and Natural England’s own work noted that there were evidence gaps in a contested area (p.18); and
- 46.1.5. the detrimental impact of the expanded ban would be severe given that only 10% of the Moorland Association’s surveyed members indicated that it would be feasible to manage their land without burning (p. 24).
- 46.2. **The IDEAL UK Fire Research Team** echoed the Moorland Association’s indication that the proposals were premature in circumstances where its research was outstanding. The Team warned that, pending the outcome of that research, “[a]t present we do not feel that there is sufficient evidence to set aside the use of burning as a management tool over this proposed expanded area and push landowners towards other intervention types”. DEFRA was accordingly offered the chance “to discuss in more detail the plans and any current findings and results from this research [...] in advance of any final decisions being made”.

- 46.3. **Professor [REDACTED]** a fire ecologist and member of the IDEAL UK Fire Research Team, reiterated these and other concerns.
- 46.4. **The National Fire Chiefs Council**, the professional voice of UK Fire and Rescue Services, explained that it was “*increasingly concerned that policy decisions being made in certain areas of Government may conflict with those being developed elsewhere*”, and in particular that “*these policies are not always aligned with those to manage the risk of wildfire*”. The NFCC warned that “[w]ithout appropriate mitigation measures, such initiatives could inadvertently lead to increased fire loads and the risk of larger, more intense wildfires”, and that “[f]urther restricting land managers’ ability to use prescribed burning as a wildfire prevention tool could compromise FRS preparedness and response, increasing the danger to firefighters and the public.”
- 46.5. **[REDACTED] Incendium Wildfire Solutions**, an organisation specialising in wildfire risk analysis, urged DEFRA to consider that:
- “1. *Fuel load is the principal driver of severe wildfire behaviour.*
 2. *Peatland fuel loads are already high and increasing.*
 3. *Extending protection to deeper peat may further raise fuel accumulation.*
 4. *Consultation mapping illustrates the vast areas that could be at increased risk.*
 5. *FRS capacity will be challenged, and personnel put at heightened risk.*
 6. *The objective of protecting peat from fire damage may not be achieved.*
 7. *Lack of support for upland managers may undermine essential land management practices.*
 8. *The proposed policy does not enhance fire resilience and may increase the future scale of wildfire events.*
 9. *Key environmental policies do not adequately account for wildfire risk.*
 10. *Additional consultation, expert input, and targeted research are urgently required.”*
47. DEFRA published its Summary of responses and government response on 9 September 2025 (“**Government Response**”).¹⁸ Its response to concerns raised in relation to wildfire risk was as follows:

¹⁸ Available at <<https://www.gov.uk/government/consultations/heather-and-grass-burning-in-england/outcome/summary-of-responses-and-government-response>>.

“Some responses to the consultation raised concerns that our policy proposals would increase the risk of damaging wildfires in upland environments. These respondents argued that prescribed burns are needed to reduce heather fuel load and decrease the risk of wildfire events occurring.

However, burning on peatland encourages heather growth. As heather’s deep roots dry out peat and form woody, flammable material, this practice increases long term vulnerability to wildfires. There is also evidence that escaped prescribed burns cause a proportion of wildfires. For more information, please see Natural England’s evidence review on the effects of managed burning on upland peatland biodiversity, carbon, and water.

Peatland restoration is the most effective, sustainable, and long-term solution for reducing the fuel load on degraded peatlands. Removing the causes of degradation (such as drainage) will see the reestablishment of blanket bog vegetation like Sphagnum mosses. This vegetation naturally suppresses heather and is more fire-resistant. Funding is available through agri-environment schemes to move towards these more sustainable methods of upland land management.

We acknowledge that restoring peatland to a naturally wet state takes time. During this transition, flammable vegetation may still need to be removed – ideally through cutting, or, in cases where this is not feasible, burning. This will be managed through the licensing system and can still be permitted with these expanded protections. We are also making updates to the licensing system – reducing complexity and enhancing coordination to make the process faster, more efficient, and easier to navigate.

Therefore, we will proceed with our proposals to expand the protections for upland peat, taking a longer-term view that restoring our peatlands will increase their resilience to the impacts of wildfire. In the shorter-term we will continue to work with National Fire Chiefs Council, landowners, land managers and other government departments to mitigate the risk of wildfire on peat.”

48. DEFRA also recorded “concerns about the practical challenges involved in mapping and policing peat depth”, to which it did not respond.
49. The IDEAL UK Fire consultation response is not listed in Annex A of the Government Response, which lists the organisations who responded to the consultation. At one stage it was suspected that the response might have been excluded on the basis that it was submitted after midday on 25 May 2025, notwithstanding that the official consultation page stipulated a deadline of 11:59pm. However, this was not the case: the IDEAL UK Fire submission, along with other academic responses, was lodged well before the stated deadline. Whatever the position, IDEAL UK Fire has not been added to Annex A.
50. On 4 September 2025, DEFRA announced a tender for ‘Wildfire and peatland: Studies to support delivery of the Third National Adaptation Programme’.¹⁹ The

¹⁹ Available at <<https://www.find-tender.service.gov.uk/Notice/057239-2025>>.

projects tendered for included six sub-projects, each investigating different aspects of the relationship between peatland land management systems and wildfire risk.

The 2025 Regulations

51. Four days later, on 8 September 2025, the Secretary of State made the 2025 Regulations, which introduced the proposed expansion to the ban on controlled burning by way of amending the 2021 Regulations.
52. Among other things, the 2025 Regulations:
 - 52.1. extended the areas of land covered by the burning ban to all LFAs in England (reg. 3);
 - 52.2. reduced the peat depth threshold in these areas from 40cm to 30cm (reg. 4);
 - 52.3. removed the ground for applying for a licence based on inaccessibility to mechanical cutting (reg. 5(d)); and
 - 52.4. amended the ground for applying for a licence based on wildfire risk to refer to wildfire “*impact*” rather than “*risk*” (reg. 5(b)).
53. The 2025 Regulations were laid before Parliament on 9 September 2025 and came into force on 30 September 2025.
54. On the same day that the 2025 Regulations were laid before Parliament, DEFRA published updated guidance on how to apply for a licence under the new regime.²⁰ That guidance stated that:
 - 54.1. online application forms would not become available until the day the 2025 Regulations come into force;
 - 54.2. applicants would need to supply a wide range of detailed evidence in support of any application;
 - 54.3. in particular, applicants applying for a licence on the ground of wildfire impact would need to supply a detailed wildfire management plan, for which updated guidance and a template would not become available until the day the 2025 Regulations come into force; and
 - 54.4. applicants “*should allow as much time as possible for [their] application[s] to be processed, and at least 12 weeks before [they] intend to burn*”.

Grounds of challenge

Ground 1: Flawed consultation

²⁰ Available at <<https://www.gov.uk/government/publications/apply-for-a-licence-to-burn-on-peat-deeper-than-30cm/guidance-how-to-apply-for-a-licence-to-burn-on-deep-peat-within-a-protected-site>>.

55. Where a public body undertakes a consultation, it must be done properly. In *R v North East Devon Health Authority ex p Coughlan* [2001] QB 213 at §108, the Court held that:

“To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

56. The consultation preceding the 2025 Regulations failed to meet these standards and was accordingly unlawful in five standalone respects.

57. **First**, as noted above, regulation 5(b) of the 2025 Regulations amended regulation 4(4) from: *“The Secretary of State may grant a licence where it is expedient or necessary—... (c) to reduce the risk of wildfire”* to *“to reduce the impact of wildfire”*. There is a significant difference between a reduction of *risk* – i.e. preventing wildfires from breaking out in the first place – and a reduction of *impact* – i.e. accepting that wildfires may break out, but seeking to mitigate any harmful effects. The Consultation Response and guidance on *“how to apply for a licence to burn on peat deeper than 30cm within a less favoured area”* both refer in a number of places to the *“risk”* of wildfires; whilst the guidance at section 3.2 proceeds on a clear distinction between *“the risk of potential wildfire and the impact this could have on people”*.

58. The amendment of regulation 4(4)(c) was not consulted on at all, and appears to have been an unexplained afterthought: see p.11 of the Consultation Document, which did not propose any changes to regulation 4(4)(c) of the 2021 Regulations. Not only was it not consulted on, in its press release announcing the proposed expansion to the ban, DEFRA expressly assured stakeholders that *“[o]ne of the grounds to apply for a licence to burn will be to reduce the risk of wildfire”* (emphasis added). The change was not even foreshadowed in the Consultation Response, which stated that regulation 4(4)(c) of the 2021 Regulations would remain as drafted. This was plainly a matter which the Secretary of State should have properly consulted on.

59. **Second**, the Secretary of State did not consult on the key piece of evidence used to justify the design of the 2025 Regulations, namely Natural England’s NEER155 evidence review. The Consultation Response stated, under the heading *“Evidence used in decision making”*, that DEFRA *“relies on good quality evidence to inform its decision-making and policy design”* and pointed to NEER155 (emphasis added):

“New scientific evidence, subject to appropriate academic rigour, has been assessed within the context of the cumulative evidence base. The report ‘An evidence review update on the effects of managed burning on upland peatland biodiversity, carbon and water (NEER155)’ published by Natural England in March of 2025 has built on its 2013 review (NEER004) by incorporating 102 new studies on the effects of burning on peatlands. The report specifically compared findings from studies published post the release of NEER004 with those included in this original review. While a number of evidence gaps have now been filled, the overall findings and conclusions are

consistent with those of the 2013 review. This review remains the most comprehensive evidence review available and concludes that burning, especially repeated burning, results in a departure from the typical structure of these habitats and can impact how they function.

60. However, the Consultation Document did not refer to NEER155 at all. As a result, whilst some respondents (like the Moorland Association) commented on NEER155, expert stakeholders – like the IDEAL UK Fire Research Team or Professor [REDACTED] – did not. They were unaware that NEER155 was being used as the main evidential basis for the proposals and were unable to raise serious concerns with the validity and/or applicability of Natural England’s analysis. Had their views on these matters been sought, they would have identified serious failings in NEER155 that will be the subject of evidence in due course.
61. This failure on the Secretary of State’s part was compounded by the fact that NEER155 was published for the first time on the day the consultation opened and was not itself subject to any public consultation. NEER155 is an obvious example of the kind of analysis that expert consultees should be asked to comment on: c.f. *R (Northern Ireland Badger Group) v DAERA* [2023] NIKB 117 at §§61-63 and 88-89.
62. The Press Release accompanying the launch of the consultation explained that DEFRA’s proposed approach “*is being supported by evidence provided by Natural England*” and referred to the publication of NEER155. However, a Press Release intended for journalists and other media professionals is no substitute for the formal Consultation Document itself. The inclusion of NEER155 in the Press Release merely reinforces the obvious requirement on the Secretary of State to ensure consultees were aware of its significance.
63. **Third**, the Secretary of State appears to have erroneously excluded from their review of consultation responses those that had been submitted after midday on 25 May 2025. As set out above, DEFRA’s website made clear that the deadline for responses was 11:59pm on this date. However, it appears to have ignored responses validly lodged before this deadline – e.g. the submission from the IDEAL UK Fire Research Team.
64. **Fourth**, the Secretary of State did not conscientiously take into account the practical ramifications of varying the scope of the 2025 Regulations – by reducing the peat depth threshold and extending restrictions to LFAs – on the timeframes for licence applications. As a result of the 2025 Regulations, landowners who wish to undertake controlled burning will now need to carry out a number of time-consuming and expensive exercises:
 - 64.1. First, they will need to obtain updated peat surveys to identify areas which are over 30cm deep. It is widely recognised that the new ‘England Peat Map’ cannot by itself be used to identify the significant increase in territorial scope; DEFRA has confirmed to the Moorland Association that it will not be used for enforcement purposes. Peat surveys are very expensive (e.g. often costing in excess of £10,000). They also take a long time to complete (often around 2-3 months). The need for fresh peat surveys was noted in the Moorland Association’s Consultation

Response, which explained that even those who had already surveyed their land for 40cm peat depth “*would need a new assessment*” (p.22).

64.2. Second, landowners will need to prepare an application to DEFRA under the 2025 Regulations, providing the extensive array of evidence required by DEFRA’s statutory guidance.²¹ In particular:

64.2.1. All applications must include the following evidence:

- *a map of the land which shows the boundaries of the landholding*
- *an 8-figure Ordnance Survey (OS) grid reference of each burn location*
- *information about an agri-environment scheme or any other agreements on the landholding*
- *proof that you have the agreement of any other parties who have rights to burn or who have a valid SSSI consent on the same land*
- *information about any training, qualifications or work experience that shows you can burn safely*
- *evidence that you have considered alternative solutions to burning and why they are not suitable*
- *a plan to show how you will manage the burn area in the future to reduce the need to burn again*

64.2.2. Applications for burns to reduce the impact of wildfire must additionally include a detailed wildfire management plan, using a prescribed template provided by DEFRA. The plan must:

- *cover the whole landholding, not just the peat area*
- *explain why the burning is necessary and will be effective to reduce the impact of wildfire*
- *show what else is being done across the land to reduce the risk of wildfire and build natural resilience of the peatland habitat*
- *detail high risk ignition points, such as picnic spots, car parks and laybys, and show what is being done to reduce the risk of fire starting in these areas*
- *identify planned areas for burning on peat deeper than 30cm, including information about vegetation type and structure and the dimensions of the burn area*
- *demonstrate how you intend to manage the site to improve landscape resilience and reduce the need to burn in the future*

64.2.3. Applications for burns on land falling within a SSSI must also include any relevant SSSI consents.

²¹ Available at <<https://www.gov.uk/government/publications/apply-for-a-licence-to-burn-on-peat-deeper-than-30cm/guidance-how-to-apply-for-a-licence-to-burn-on-deep-peat-within-a-protected-site#evidence-you-need-to-provide>>.

- 64.3. These requirements would be significant even if applicants already had all the necessary information to hand. In the majority of cases, however, it is unlikely that all owners will already have the information required. For example, it may take at least several weeks to commission a wildfire plan from a specialist consultant, even assuming one is available immediately.
- 64.4. Moreover, each of (i) the application portal, (ii) the detailed guidance on evidence and (iii) the wildfire management plan template only became available on 30 September 2025, one day before the burning season opened for upland areas and one month before it would open for other areas. As a result, applications could only be meaningfully prepared from 30 September 2025 onwards.
- 64.5. Third, landowners will have to await DEFRA's decision on that application. The guidance indicates that DEFRA's decision will take "*at least*" 12 weeks. (By way of comparison, decisions on applications under the 2021 Regulations have usually been provided within four weeks, in line with the requirement under reg. 4(3) of the 2021 Regulations to submit licence applications not less than 28 days before the proposed date of burning.)
65. As a result of these factors, it is likely that licences to burn will only be granted towards the very end of the burning season (at which point burning in many places is less effective because the ground is less dry), or in many cases *after* it has concluded. The reality of the position is that the suitability of the land for any necessary controlled burns depends on its height and positioning, as well as on the weather (wind and rain, including across the season as a whole), which are defining factors. The days available to land managers which are suitable for carrying out controlled burning can be very limited even in a normal season. This is a significant flaw in the 2025 Regulations, which is highly likely to result in a complete *de facto* ban on burning within the 2025-26 burning season, or at least the vast majority of it, and is therefore substantively irrational and/or results in an unlawful fettering of discretion for the reasons given at §75 below.
66. In the context of the Claimants' consultation challenge, the Secretary of State unlawfully:
- 66.1. failed to notify consultees that: (i) the application process will only open on 30 September; (ii) it would not be providing landowners with the application form, template restoration plan or updated guidance before this date; and (iii) it would be taking at least 12 weeks to provide decisions in response to licence applications.
- 66.2. failed to address, properly or at all, the cumulative and/or individual impact of the various factors listed above on the ability of landowners to obtain consent for controlled burns within the 2025-26 burning season. For example, the Consultation Response recognised the enormous increase in area covered by the 2025 Regulations and noted that "*[s]everal respondents expressed concerns about the practical challenges involved in mapping and policing peat depth*", but offered no answer to those concerns.

67. **Fifth**, the Secretary of State did not conscientiously take into account consultation responses that addressed the benefits of controlled burning in tackling the risk of wildfires and the corresponding disbenefits of, and challenges associated with, alternative techniques. Three points bear emphasis.

67.1. As recognised in the Consultation Response, the 2025 Regulations are predicated on the basis that controlled burning should only be used *“in very limited circumstances”*. And yet the Consultation Response fails to grapple with the *“minority of respondents [who] opposed the proposal, often citing concerns that changing the burning prohibition could complicate land management and increase wildfire risk due to increased fuel loads from vegetation that cannot be managed through burning”*. The closest the Consultation Response comes to addressing these concerns is a generalised reliance on NEER155 and a vague statement that *“Defra relies on good quality evidence to inform its decision-making and policy design”*. However, there is no substantive attempt to consider and respond to criticisms of the suggestion that land management practices other than controlled burning can more effectively reduce wildfire risk – including, for example, those raised by the Moorland Association, the IDEAL UK Fire Research Team and Professor [REDACTED]. This error is compounded by DEFRA’s failure to consult on the validity and/or applicability of NEER155 (see §61 above).

67.2. The Secretary of State also failed to adequately consider the Moorland Association’s explanation that only 10% of the Moorland Association’s members who responded to their survey (55 in total) indicated that it would be feasible to manage their land without burning (§46.1.5 above). In these circumstances it was incumbent on DEFRA to square these practical challenges with the policy rationale set out in the Consultation Response that controlled burning should only be used *“in very limited circumstances”*.

67.3. The Explanatory Note to the 2025 Regulations states that *“[a]n impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen”*. Similarly, the Explanatory Memorandum explains that DEFRA did not prepare an Impact Assessment because *“[t]here is no, or no significant, impact on business, charities or voluntary bodies”* (§9.2) and because *“[t]here is no, or no significant, impact on the public sector”* (§9.5). That approach is unsustainable, and indicates that the Secretary of State has not adequately grappled with key issues highlighted by consultees:

67.3.1. The Secretary of State overlooks the obvious financial cost to Fire and Rescue Services of fighting wildfires – to say nothing of the risks to firefighters themselves. For example:

- (i) As NFCC explained in its response, *“Responding to wildfires requires a significant amount of FRS resources, both in terms of the number of firefighters and the amount of equipment required, often over prolonged periods of days or even weeks. This is especially challenging in a context of increasing financial pressures, as wildfire response is not separately funded and falls under the general duty of FRSs to extinguish*

fires. Any changes to regulations that inadvertently increase the frequency or severity of wildfires would further stretch already limited resources and could impact FRSs' ability to keep communities safe."

- (ii) In the same vein, [REDACTED] emphasised that *"FRS capacity will be challenged, and personnel put at heightened risk"*.
- (iii) The paper "Costs of UK Wildfires per Hectare", referred to at p.23 of the Moorland Association's consultation response, refers to academic research from 2011 estimating that UK Fire & Rescue incur around £55 million per year fighting wildfires. That number will no doubt have increased dramatically in recent years. The paper also refers to the example of the Winter Hill wildfire of 2018, which cost £1.2 million to tackle.

67.3.2. There is no recognition of other impacts on the public. For example, "Costs of UK Wildfires per Hectare" refers to significant health-related economic costs of wildfires that run into the many millions, as well as the costs of environmental damage, such as reductions in air or water quality.

67.3.3. Further, the Secretary of State has disregarded the significant impact of wildfires on businesses and private individuals. For example, "Costs of UK Wildfires per Hectare" records by way of example that, as a result of 2022 farm fires, crop and machinery losses cost NFU Mutual £83.5 million in claims.

67.3.4. The Secretary of State has moreover overlooked the financial burdens associated with changes to land management practices. Of the 55 Moorland Association Members who responded to an online questionnaire, 85% indicated their land management practices would have to be updated, and that this would come with a significant cost. As explained at p.23 of the Moorland Association's response, *"Estimates of the quantum of costs varied from £5,000 to £130,000 in capital costs and between £5,000 and £20,000 per annum in ongoing expenditure"*. It is wholly unclear how, in light of this evidence, the Impact Assessment claims that *"the estimated total net increase in cost brought about by this instrument, calculated based on direct engagement with landowners, would be £0.5 million per year"* (§7.3).

67.3.5. The failure to conduct any Impact Assessment sits in stark contrast to the detailed Impact Assessment produced for the 2007 Regulations. That assessment recognised, for example, that the impact of wildfires *"could range from a negligible cost through to very significant costs in terms of human health, human life, and potentially £millions of damage to property and the wider environment"* (Table 2).

68. For all of these reasons, taken individually or cumulatively, the consultation was legally flawed, and the 2025 Regulations are therefore unlawful: e.g. *R. v Secretary of State for Health Ex p. United States Tobacco International Inc.* [1992] Q.B. 353, p.376.

Ground 2: Procedural irrationality

69. The Secretary of State failed to ask the right questions and/or breached the *Tameside duty by failing to* take reasonable steps to acquaint himself with the relevant information to enable it to answer those questions. The applicable principles are set out, e.g., in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, §99–100; and *R (Balajigari) v Secretary of State for the Home Department* [2019] 1 WLR 4647, §70.
70. **First**, the Secretary of State failed to have adequate regard to and/or make sufficient enquiries in relation to the comparative efficacy and/or viability of controlled burning and alternative land management practices on tackling wildfire risk. In particular:
 - 70.1. The Secretary of State failed properly to consider responses which explained that the research into alternative land management practices (e.g. mechanical cutting or rewetting) was marked by significant limitations, uncertainties and/or gaps (see §67 above).
 - 70.2. DEFRA refused the IDEAL UK Fire Research Team’s invitation to discuss its concerns in more detail with reference to ongoing research the team was undertaking (see §§46.2 and 63 above). Indeed, DEFRA refused to take into account the Team’s consultation response at all (see §49 above).
 - 70.3. In circumstances where consultees were not invited to comment upon NEER155 (see §60 above), DEFRA did not properly consider the validity and/or applicability of Natural England’s analysis when formulating the 2025 Regulations.
 - 70.4. The failure to make reasonable enquiries is evidenced by DEFRA’s recent tender for studies relating to wildfire and peatland (see §50 above), which was launched just four days before making the 2025 Regulations, and which provides a clear acknowledgment of the fact that further research into this area is necessary and warranted. That work should have been undertaken prior to the making of the 2025 Regulations.
71. **Second**, the Secretary of State failed to have adequate regard and/or make sufficient enquiries in relation to the impact of the 2025 Regulations, and the increased wildfire risk arising, on both public and private interests. The points at §67.3 above are repeated.
72. **Third**, the Secretary of State failed to have adequate regard and/or make sufficient enquiries in relation to the factors set out at §64 above, all of which lead to a serious risk that burning licences will only be granted towards the very end of the burning season or after it has concluded.

73. **Fourth**, there is no indication that the Secretary of State properly turned their mind to the consequences of amending regulation 4(4)(c), so that the reference to “*risk of wildfire*” was replaced with “*impact of wildfire*”. As set out at §57 above, there is a significant difference between these two formulations.

Ground 3: Substantive irrationality

74. The 2025 Regulations are also substantively irrational.
75. **First**, as set out at §§64-65 above, as a result of the policy choices made by the Secretary of State within the 2025 Regulations and in the design of the application process, there is a *de facto* ban on burning for the entirety of the 2025-26 season, or at least the vast majority of it. It is implicit in the 2025 Regulations that controlled burning may in certain cases be the only viable and effective way of tackling wildfires: see regulation 4(4)(c) (noting, however, the second instance of substantive irrationality immediately below). The Consultation Response recognises that “*prescribed burning may be a necessary management tool in very limited circumstances*”. Implementing the 2025 Regulations in a way that precludes prescribed burning for all or the vast majority of the forthcoming burning season is inconsistent with this important conclusion. The absence of any transitional provision to address these points is *Wednesbury* unreasonable.
76. **Second**, the amendment (by regulation 5(b) of the 2025 Regulations) of regulation 4(4)(c) of the 2021 Regulations is irrational. As set out at §57 above, there is a material difference between a reduction of wildfire risk and mitigation of its impacts, as DEFRA itself appears to acknowledge. Although not clear from the legislation itself, or the Explanatory Memorandum or Explanatory Notes, the new regulation 4(4)(c) appears to proceed on the assumption that controlled burning cannot reduce the risk of wildfires and so the focus should shift to mitigating its impacts. Even DEFRA accepts in the Consultation Response that controlled burning may reduce wildfire risk in certain circumstances. The Claimants cannot glean any rational explanation for this obvious inconsistency between the language of the 2025 Regulations and the overall policy objective.
77. **Third**, it is irrational for the Secretary of State to extend the territorial reach of the 2025 Regulations in circumstances where controlled burning is a tried-and-tested way of reducing wildfire risk, whereas the efficacy and/or viability of land-management practices is unclear. In particular:
- 77.1. It is irrational for the Secretary of State to adopt the position that alternative land management practices are preferable in tackling wildfire risk.
- 77.2. Further or alternatively, it is irrational for the Secretary of State to undertake a substantial extension of the territory subject to licensing requirements in circumstances where there is no robust basis for preferring alternative land management practices to controlled burning. The 2025 Regulations result in a large-scale experiment with these alternative techniques. Wildfire risk is a matter of the utmost gravity. Given the unproven nature of alternative land management practices, the weight placed on these risks by the Secretary of State is irrational.

Ground 4: A1P1 incompatibility

78. Article 1, Protocol 1 of the European Convention on Human Rights (“**A1P1**” and “**ECHR**”) provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.”

79. The 2025 Regulations interfere with the following, each of which is a “*possession*” for the purposes of A1P1:

79.1. Licences to burn granted by the Secretary of State under the 2021 Regulations, which our clients understand may be rendered void by the 2025 Regulations and require fresh applications: c.f. *R (Mott) v Environment Agency* [2018] UKSC 10. Please confirm by response whether this understanding is accurate.

79.2. SSSI consents and/or Site Management Statements (“**SMs**”) granted by Natural England pursuant to the Wildlife and Countryside Act 1981. Following the introduction of the 2025 Regulations, landowners with permission under these consents and SMSs to engage in controlled burning will no longer be able to do so, at least in respect of newly restricted areas of land, pending any successful application to DEFRA pursuant to reg. 4: c.f. *Mott*. [REDACTED]

79.3. Stewardship agreements granted by the Rural Payments Agency (an executive agency of DEFRA), which confer rights to receive payments in exchange for discharging specific land management obligations, and which often expressly provide that the land will be managed by means of controlled burning. Following the introduction of the 2025 Regulations, landowners’ ability to engage in controlled burning in accordance with these agreements will be impaired: c.f. *Mott*. [REDACTED]

79.4. All freehold interests falling within scope of the 2025 Regulations, which are subject to restrictions on controlled burning arising from the 2025 Regulations: c.f. for example, the restrictions on property development considered in *Sporrong & Lönnroth v Sweden* (1982) 5 EHRR 85.

79.5. Contractual rights to burn granted in leasehold agreements: c.f. *Mott*. [REDACTED]

80. The 2025 Regulations result in a disproportionate interference with these rights under A1P1. Pending an explanation by the Secretary of State as to what legitimate aim the 2025 Regulations pursue, how they are rationally connected

with that legitimate aim, and whether or not less intrusive means could have been used, the Claimants emphasise the following points with regards to the overall balance struck:

- 80.1. There are no transitional provisions that address the issues identified at §64 above, with the consequence that landowners will be prohibited from controlled burning for the majority, if not the entirety, of the 2025-26 burning season: c.f. *Vékony v Hungary* [2015] ECHR 5 at §34.
- 80.2. The process by which the 2025 Regulations were made was seriously flawed in a number of respects for the reasons given at §§57-73 above: *Vékony* at §35. Relatedly, DEFRA has not properly understood limitations with the efficacy and/or viability of alternative land-management practices to controlled burning.
- 80.3. Landowners are not provided with any compensation for the extensive costs they must incur in applying for a licence, including the costs of obtaining a peat survey (see §§64.1 above): *Depalle v France* (2012) 54 EHRR 17 at §91.
- 80.4. In many cases the 2025 Regulations retrospectively undermine freely negotiated contractual arrangements between freeholders and tenants. Where contested legislation is retrospective or retroactive it requires “*special justification*”: *Bäck v Finland* (2004) 40 EHRR 1184 at §68.

Relief

81. The 2025 Regulations (or parts of them) are vitiated by the above material errors of law. The Claimants will accordingly seek declaratory relief and an order quashing the 2025 Regulations.

The details of the action that the Defendant is expected to take

82. The Secretary of State is asked to revoke the 2025 Regulations.

ADR proposals

83. Our clients regret that the matter has come to this and they have been left with no choice but to resort to formal action, not least given the timeframes involved. However, they remain very willing to have meaningful dialogue in relation to the issues raised and to consider suitable ADR proposals.

The details of any information sought and documents that are considered relevant and necessary

84. Please provide any key documents which contain evidence relevant to the issues set out in above, including (without limitation):
 - 84.1. all ministerial submissions made to the Secretary of State and/or any other relevant Minister in relation to the 2025 Regulations;

- 84.2. any documents (including, but not limited to, any ministerial submissions or internal emails) addressing whether or not to include Natural England's NEER155 evidence review within the consultation;
- 84.3. any consultation responses other than those referred to above which express concerns about the ability of land management techniques other than controlled burning to address the risk of wildfire, including (without limitation) any consultation responses from fire and rescue services and other wildfire specialists;
- 84.4. details of any consultation responses which the Secretary of State declined to consider because of the time that they were submitted, including confirmation as to whether the IDEAL UK Fire Research Team was considered;
- 84.5. any other documents and communications (including, but not limited to, any ministerial submissions or internal emails) addressing wildfire risk that were considered by DEFRA and/or the Secretary of State as part of the consultation process;
- 84.6. documents and communications (including, but not limited to, any ministerial submissions or internal emails) addressing the decision to amend the ground for applying for a licence based on wildfire risk to refer to wildfire "*impact*" rather than "*risk*";
- 84.7. any information from the Home Office regarding relevant strategies, policies and/or costs relating to wildfire management (on the assumption that the Secretary of State obtained such relevant information prior to making the 2025 Regulations);
- 84.8. evidence, in relation to the 2025 Regulations, of action taken by DEFRA in the discharge of its responsibilities set out under the Home Office's 2018 Wildfire Framework for England;
- 84.9. any documents (including, but not limited to, any ministerial submissions or internal emails) addressing the decision not to undertake an impact assessment;
- 84.10. documents and communications (including, but not limited to, any ministerial submissions or internal emails) relating to the 4 September 2025 tender for 'Wildfire and peatland: Studies to support delivery of the Third National Adaptation Programme', including documents relating to its intended rationale and purpose;
- 84.11. documents and communications (including, but not limited to, any ministerial submissions or internal emails) considering the A1P1 interferences identified at §78 above; and
- 84.12. details of whether and to what extent DEFRA took into account the government's commitment to wildfire management in the Kananaskis Wildfire Charter.

85. We consider that this material is required pursuant to the Secretary of State's duty of candour which, as you will be aware, applies at the pre-action stage. The requests are focused, and directly relevant to the grounds of challenge articulated above. They should also be readily available, given the close time proximity of the consultation exercise. In the event that you decline to provide this material at this stage, please provide clear reasons for doing so, by reference to each individual request. We reserve our right to draw those responses to the court's attention.

The address for reply and service of court documents

86. Mishcon de Reya LLP, Africa House, 70 Kingsway, London, WC2B 6AH. [REDACTED]
[REDACTED]

Case management and next steps

87. As indicated above, the coming into force of the 2025 Regulations will immediately and irreversibly restrict the ability to mitigate wildfire risk across nearly 700,000 hectares of land. The practical effect of the 2025 Regulations is (at best) to shorten the window for prescribed burning in the 2025/26 season significantly or (more likely) to impose a complete *de facto* ban for the entire season.
88. If the Secretary of State declines to revoke the 2025 Regulations, the Claimants invite the Secretary of State to confirm that she will suspend the practical implementation of the 2025 Regulations pending determination of the proposed claim.²² Alternatively, the Claimants seek the Secretary of State's consent that the claim is expedited and 'rolled-up', to be heard by the end of the 2025 Michaelmas Term. The Claimants' current best estimate is that 2 days would be required for the hearing.
89. Please confirm the Secretary of State's position by response.

Yours faithfully

Mishcon de Reya LLP

Mishcon de Reya LLP

[REDACTED]
[REDACTED]

²² See footnote 1 above.