



Law Society
of Scotland

Consultation Response

Ending the sale of peat in Scotland

12 May 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Ending the sale of peat in Scotland.¹ The sub-committee has the following comments to put forward for consideration.

General Remarks

Given the remit of the sub-committee, we do not wish to comment substantively on the technical and industry-focussed questions set out in the consultation. However, we wish to make the following general observations.

We welcome the consultation and stress the need for any legislative reform to adequately balance the environmental, economic, and social considerations of the peat industry in Scotland.

We note the consultation is focussed on the horticultural industry, initially targeting the retail market then latterly the professional market. If such legislative provisions come into force, it is important that there is clarity and certainty in the law in order that individuals and businesses can guide their conduct appropriately. Any changes to the policy and legislative framework on this matter would merit an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised provisions.

More detailed analysis of the specific legislative proposals will be required in due course to ensure legal clarity and avoid unintended consequences. As a general remark at this stage, we would note that (as in other cases of proposed regulatory change) proper consideration of the impact of the United Kingdom Internal Market Act 2020 (the “**Internal Market Act**”) on the practical effect of any restrictions on sales in Scotland is necessary.

We note the results of the Department for Environment, Food and Rural Affairs’ consultation on ending the retail sale of peat in horticulture in England and Wales, and the UK Government’s commitment to banning the sale of peat and peat containing products in England by 2024.² As such, given the discussion of similar plans in other parts of the UK, proper consideration of how any change in Scotland might work with or against developments in other parts of the UK is required. Whilst the Scottish Government can develop its own policies on its own timescales, we understand that the Internal Market Act would be engaged if the Scottish

¹ <https://consult.gov.scot/environment-forestry/ending-the-sale-of-peat/>

² [Ending the retail sale of peat in horticulture in England and Wales - Defra - Citizen Space](#)

Parliament legislates for a ban to come into effect prior to analogous provisions elsewhere in the UK – and therefore the impact of this requires consideration, not least in relation to the timing of any ban on sales.

Additionally, as a more general remark, we note that future legislative and policy change in this area will need to balance the different aspects of both the sale and use of peat (including horticultural use). Whilst the consultation is concerned with the horticultural industry, we would highlight the different practical, social, and legal considerations relevant to other areas of the peat industry – including the use of peat as a fuel and heating source, particularly in remote treeless areas of the highlands and islands. Should subsequent policy proposals extend to similar restrictions on a landowner, tenant, or crofter’s ability to cut and use peat as a fuel source, additional distinct legal issues would arise – e.g. in the property law context concerning the servitude right of fuel, feal, and divot – which would require thorough analysis and a robust evidence basis to merit legislative intervention.

For further information, please contact:

Robbie Forbes

Policy Team

Law Society of Scotland

0131 476 816

policy@lawscot.org.uk