



# Nature Conservation (Scotland) Act 2004

## 2004 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 5th May 2004 and received Royal Assent on 11th June 2004**

An Act of the Scottish Parliament to make provision in relation to the conservation of biodiversity; to make further provision in relation to the conservation and enhancement of Scotland's natural features; to amend the law relating to the protection of certain birds, animals and plants; and for connected purposes.

### PART 1

#### BIODIVERSITY

#### **1 Duty to further the conservation of biodiversity**

- (1) It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.
- (2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—
  - (a) any strategy designated under section 2(1), and
  - (b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

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#### **Modifications etc. (not altering text)**

- C1** S. 1 modified (31.10.2009) by [Climate Change \(Scotland\) Act 2009 \(asp 12\)](#), **ss. 59(4)**, 100(2) (with s. 95); [S.S.I. 2009/341](#), **art. 2(2)(a)**

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#### **Commencement Information**

- II** S. 1 in force at 29.11.2004 by [S.S.I. 2004/495](#), **art. 2**

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*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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## 2 Scottish Biodiversity Strategy

- (1) The Scottish Ministers must designate as the Scottish Biodiversity Strategy one or more strategies for the conservation of biodiversity (whether prepared by them or by one or more other persons).
- (2) The Scottish Ministers must publish any strategy so designated in such manner (including on the internet or by other electronic means) as they think fit.
- (3) A strategy so designated may include different provision for different cases or types of case.
- (4) Within one year of a strategy being so designated, the Scottish Ministers must publish, in such manner (including on the internet or by other electronic means) as they think fit, lists of—
  - (a) species of flora and fauna, and
  - (b) habitats,considered by the Scottish Ministers to be of principal importance for the purpose mentioned in section 1(1).
- (5) The Scottish Ministers may from time to time review any lists published under subsection (4).
- (6) Where, following such a review, the Scottish Ministers consider that any such lists should be revised they must publish revised lists under that subsection.
- (7) The Scottish Ministers must, within 3 years of the date on which—
  - (a) they first designate a Scottish Biodiversity Strategy, or
  - (b) a report was last laid under this subsection,lay a report before the Scottish Parliament regarding the implementation of the strategy.

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### Commencement Information

**I2** S. 2 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

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*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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## PART 2

### CONSERVATION AND ENHANCEMENT OF NATURAL FEATURES

#### CHAPTER 1

##### SITES OF SPECIAL SCIENTIFIC INTEREST

###### *Notification of sites of special scientific interest*

### **3 Duty to give notification of sites of special scientific interest**

- (1) Scottish Natural Heritage (“SNH”) must, where it considers that any land is of special interest by reason of any of its natural features, notify that fact to the persons mentioned in section 48(2) (“the interested parties”).
- (2) References in this Act to a “natural feature” of land are references to any of its flora or fauna or geological or geomorphological features.
- (3) In determining for the purposes of subsection (1) whether any land is of special interest SNH must have regard to—
  - (a) the extent to which giving notification under that subsection in relation to the land would contribute towards the development of a series of sites of special scientific interest in Scotland representative of the diversity and geographic range of—
    - (i) Scotland’s natural features,
    - (ii) the natural features of Great Britain,
    - (iii) the natural features of the member States, and
  - (b) any guidance issued or approved under subsection (1) of section 54 so far as containing information of the description referred to in subsection (2)(a) of that section.
- (4) A notification under subsection (1) must be accompanied by—
  - (a) a document which—
    - (i) describes the land to which the notification relates,
    - (ii) specifies the natural feature by reason of which SNH considers the land to be of special interest,
    - (iii) specifies acts or omissions which appear to SNH to be likely to damage that natural feature, and
    - (iv) contains such other information as SNH thinks fit, and
  - (b) a map on which the land is delineated.
- (5) The notification, document and map referred to in subsection (4) are in this Act together referred to, in relation to the land in question, as the “SSSI notification”.
- (6) An SSSI notification has effect from the date on which it is given; and the land in question is, until the notification ceases to have effect, to be known as a “site of special scientific interest”.

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- (7) Each act or omission specified in an SSSI notification by virtue of subsection (4)(a)(iii) is, in relation to the site of special scientific interest, in this Act referred to as an “operation requiring consent”.

**Commencement Information**

**I3** S. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**4 Site management statements**

- (1) An SSSI notification must be accompanied by a site management statement.
- (2) A site management statement is a statement prepared by SNH which—
  - (a) provides guidance to owners and occupiers of land within a site of special scientific interest as to how the natural feature specified in the SSSI notification should be conserved or enhanced, and
  - (b) contains such other information in relation to the site of special scientific interest as SNH thinks fit.
- (3) That information may include information which promotes understanding and enjoyment by the public of the natural feature specified in the SSSI notification.
- (4) SNH may, at any time during which an SSSI notification has effect—
  - (a) on the request of any owner or occupier of land within the site of special scientific interest, or
  - (b) of its own accord,
 review and, if it thinks fit, revise the site management statement.
- (5) SNH must provide a copy of any statement so revised to every owner and occupier of land within the site of special scientific interest.

**Commencement Information**

**I4** S. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**5 Enlargement of sites of special scientific interest**

- (1) Where SNH considers that if land (“extra land”) which is contiguous to or which it considers to be otherwise associated with a site of special scientific interest were combined with the site, the combined land would be of special interest by reason of any of its natural features, it may notify that fact to the persons who are the interested parties in relation to the extra land.
- (2) Subsection (3) of section 3 applies for the purposes of subsection (1) of this section as it applies for the purposes of subsection (1) of that section.
- (3) Sections 3(4) and 4(1) and (2) apply in relation to a notification of extra land under subsection (1) of this section as they apply to a notification under section 3(1), but as if—
  - (a) in section 3(4)(a)(ii), the reference to the land were a reference to the combined land,

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- (b) in section 4(2), the references to a site of special scientific interest were references to the combined land.
- (4) Representations under schedule 1 with respect to a notification under subsection (1) are not competent so far as they relate to the original SSSI notification.

#### Commencement Information

**I5** S. 5 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## 6 Review of operations requiring consent

- (1) SNH—
- (a) must, on the request of any owner or occupier of land within a site of special scientific interest,
  - (b) may when it thinks fit,
- review the operations requiring consent specified in an SSSI notification.
- (2) SNH must not carry out—
- (a) the first such review within 6 years of the date on which the SSSI notification was given,
  - (b) any subsequent such review within 6 years of the previous review,
- except where the review is carried out under subsection (1)(b) and SNH has obtained the agreement of every owner and occupier of land within the site of special scientific interest.
- (3) Such agreement is obtained if SNH gives notice of a proposed review to every owner and occupier of land within the site of special scientific interest and—
- (a) every such person consents to SNH carrying out the review, or
  - (b) no reasonable objection by any such person to the carrying out of the review is received by SNH within 28 days of the date on which the notice was given.
- (4) SNH may, in carrying out a review of operations requiring consent, also review any consents to carry out the operations given on applications under section 16(2).
- (5) If, on completion of a review, SNH is of the opinion that the SSSI notification should be amended by—
- (a) adding to the operations requiring consent specified in it,
  - (b) modifying the description of any operation requiring consent so specified, or
  - (c) removing any operation requiring consent so specified from it,
- SNH must amend the SSSI notification by giving notification of the amendment to every owner and occupier of land within the site of special scientific interest.

#### Modifications etc. (not altering text)

**C2** S. 6(2) excluded (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **20(6)** (with [regs. 20-21](#))

#### Commencement Information

**I6** S. 6 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## 7 Addition or modification of operations requiring consent: urgent situations

- (1) Where SNH considers that a person is carrying out, or intends to carry out, an operation (other than an operation requiring consent) which it considers is damaging or is likely to damage any natural feature specified in an SSSI notification and that the situation is one of urgency, SNH may, with the consent of the Scottish Ministers, amend the SSSI notification by—
  - (a) adding to the operations requiring consent specified in it,
  - (b) modifying the description of any operation requiring consent so specified.
- (2) An application to the Scottish Ministers for their consent under subsection (1) must—
  - (a) set out SNH's reasons for considering that the proposed amendment should be made and that the situation is one of urgency, and
  - (b) contain such other information relating to the proposed amendment as the Scottish Ministers may specify.
- (3) If the Scottish Ministers give their consent under subsection (1), SNH must amend the SSSI notification by giving notification of the amendment and of the consent—
  - (a) to every owner and occupier of land within the site of special scientific interest, and
  - (b) where the person whom SNH considers is carrying out or is likely to carry out the operation is not given notice under paragraph (a), to that person.

### Commencement Information

**I7** S. 7 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

## 8 Variation of SSSI notifications

- (1) SNH may, at any time after it has given notice under paragraph 10 of schedule 1 of a decision to confirm an SSSI notification, vary the matters included in the notification by virtue of section 3(4)(a)(i), (ii) and (iv) (whether by adding to them, changing them or removing matter from them) by giving notification to the interested parties.
- (2) The area of the land to which the SSSI notification relates cannot be varied under this section.

### Commencement Information

**I8** S. 8 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

## 9 Denotification of sites of special scientific interest

- (1) SNH may, where it considers that all or any part of a site of special scientific interest is no longer of special interest by reason of the natural feature specified in the SSSI notification, give notification to the persons set out in subsection (2) of its intention to revoke the SSSI notification or, as the case may be, modify it so as to disapply its effect to the part of the site in question.
- (2) Those persons are the interested parties in relation to the site or, as the case may be, the part of the site in question.

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- (3) In determining for the purposes of subsection (1) whether all or any part of a site of special scientific interest is no longer of special interest, SNH must have regard to—
- (a) the extent to which the SSSI notification continues to contribute towards the development of a series of sites of special scientific interest in Scotland representative of the diversity and geographic range of—
    - (i) Scotland’s natural features,
    - (ii) the natural features of Great Britain,
    - (iii) the natural features of the member States, and
  - (b) any guidance issued or approved under subsection (1) of section 54 so far as containing information of the description referred to in subsection (2)(a) of that section.
- (4) A notification under subsection (1) must be accompanied by—
- (a) a document which—
    - (i) describes the site of special scientific interest or, as the case may be, the part in question, and
    - (ii) explains why SNH considers the site of special scientific interest or part no longer to be of special interest by reason of the natural feature specified in the SSSI notification, and
  - (b) a map on which the site of special scientific interest or part is delineated.

**Commencement Information**

**I9** S. 9 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

**10 Notifications relating to sites of special scientific interest: procedure**

Schedule 1 sets out procedure relating to notifications given under sections 3(1), 5(1) and 9(1).

**Commencement Information**

**I10** S. 10 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

**11 Effect of SSSI notification**

- (1) From the date when SNH gives—
- (a) notice under paragraph 10 of schedule 1 of a decision to confirm an SSSI notification with modifications,
  - (b) notification under section 5(1), 6(5), 7(3) or 8(1) in relation to an SSSI notification,
  - (c) notice under paragraph 10 of schedule 1 of a decision to confirm a notification given under section 5(1) with modifications,
  - (d) notice under that paragraph of a decision to confirm a notification given under section 9(1) in relation to part only of the site of special scientific interest,
- the SSSI notification has effect as amended by the modifications or, as the case may be, the notification given under section 5(1), 6(5), 7(3), 8(1) or 9(1).

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- (2) Where SNH gives notice under paragraph 10 of schedule 1 of a decision to withdraw a notification given under section 5(1), the SSSI notification to which the withdrawn notification relates has effect, from the date on which the notice under that paragraph is given, as if the withdrawn notification had never been given.
- (3) An SSSI notification ceases to have effect on SNH giving notice under paragraph 10 of schedule 1 of a decision—
  - (a) to withdraw the SSSI notification, or
  - (b) to confirm a notification given under section 9(1) of its intention to revoke the SSSI notification.

**Commencement Information**

**I11** S. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Exercise of functions in relation to sites of special scientific interest*

**12 Exercise of functions by public bodies etc.**

- (1) This section applies to the exercise by a public body or office-holder of any function on, or so far as affecting, any land which is or forms part of a site of special scientific interest.
- (2) The body or office-holder must—
  - (a) consult SNH in relation to the exercise of the function,
  - (b) have regard to any advice given by SNH, and
  - (c) in exercising the function, take reasonable steps, so far as is consistent with the proper exercise of the functions of the body or office-holder, to—
    - (i) further the conservation and enhancement of the natural feature specified in the SSSI notification, and
    - (ii) maintain or enhance the representative nature of any series of sites of special scientific interest to which the SSSI notification contributes.
- (3) This section is without prejudice to sections 13 to 15.

**Commencement Information**

**I12** S. 12 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Operations affecting sites of special scientific interest*

**13 Operations by public bodies etc.**

- (1) A public body or office-holder must not carry out any operation which is likely to damage any natural feature specified in an SSSI notification except—
  - (a) with the written consent of SNH given on an application under subsection (3),
  - (b) where subsection (1) of section 14 applies, or
  - (c) in accordance with subsection (2) of that section.



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- (2) Subsection (1) of this section applies whether or not the operation would take place on land within a site of special scientific interest.
- (3) An application for SNH's consent must specify—
  - (a) the nature of the operation,
  - (b) the proposed dates of commencement and completion, and
  - (c) the land on which it is proposed to carry out the operation.
- (4) On an application under subsection (3) SNH may—
  - (a) give consent to the operation being carried out, whether or not subject to conditions, or
  - (b) refuse such consent.
- (5) The conditions referred to in subsection (4)(a) may, in particular, provide—
  - (a) that, despite the terms of the application under subsection (3), the operation may be carried out—
    - (i) only in such manner as SNH may specify,
    - (ii) on part only of the land on which the public body or office-holder wishes to carry out the operation,
  - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (6) SNH must, in giving or refusing consent, provide the public body or office-holder with written advice in relation to the operation, including advice on minimising such damage as is referred to in subsection (1).
- (7) SNH must give a public body or office-holder reasons for a decision under this section—
  - (a) to give consent subject to conditions,
  - (b) to refuse consent.
- (8) SNH is, if it neither gives nor refuses consent within 28 days of the date of the application under subsection (3), to be treated as having refused consent.

#### **Commencement Information**

**I13** S. 13 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## **14 Operations by public bodies etc.: authorised operations**

- (1) SNH's consent under section 13 is not required in relation to the carrying out of an operation of the type described in subsection (1) of that section—
  - (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 15,
  - (b) which is authorised by a planning permission granted on an application under Part III of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - (c) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent,
  - (d) in accordance with the terms of a management agreement between SNH and the public body or office-holder carrying out the operation, or

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- (e) in accordance with any plan relating to the management of land which has been prepared by the public body or office-holder and approved in writing by SNH for the purposes of this section.
- (2) A public body or office-holder may, if all the conditions set out in subsection (3) are satisfied, carry out an operation of the type described in section 13(1)—
- (a) in respect of which SNH has refused consent, or
  - (b) in a case where SNH has given consent, otherwise than in accordance with any condition to which the consent is subject.
- (3) Those conditions are—
- (a) that the public body or office-holder has, more than 28 days after the date of the application under section 13(3), given notice to SNH of—
    - (i) the date (which must be at least 28 days after the date of the notice) on which it proposes to commence the operation, and
    - (ii) what (if anything) the body or office-holder has done, or proposes to do, in consequence of any written advice in relation to the operation which it has received, before the date of the notice, from SNH in pursuance of section 13(6),
  - (b) that the body or office-holder carries out the operation in such a way as to give rise to as little damage or disturbance as is reasonably practicable in all the circumstances to any natural feature specified in an SSSI notification (having had regard, in particular, to any such advice as is referred to in paragraph (a) (ii)),
  - (c) that in carrying out the operation, the body or office-holder complies with section 12(2)(c).
- (4) Subsection (5) applies where—
- (a) a public body or office-holder carries out an operation for which it would, but for subsection (1)(a) or (c) or (2), require SNH's consent, and
  - (b) the operation damages any natural feature specified in an SSSI notification.
- (5) Where this subsection applies the body or office-holder must—
- (a) consult SNH as to the manner in which the natural feature should be restored to its former condition, and
  - (b) restore it, so far as is reasonably practicable, to that condition in accordance with any advice given by SNH in pursuance of paragraph (a).

**Commencement Information**

**I14** S. 14 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**15 Consent by certain regulatory authorities**

- (1) This section applies where the permission of a relevant regulatory authority is needed before operations may be carried out.
- (2) A reference in this Act to a relevant regulatory authority is reference to any person designated as such for the purposes of this Act by order made by the Scottish Ministers.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (3) Before deciding whether to permit the carrying out of an operation which is likely to damage any natural feature specified in an SSSI notification, the authority must notify SNH of the proposal to carry out the operation specifying—
  - (a) the nature of the operation,
  - (b) the proposed dates of commencement and completion, and
  - (c) the land on which it is proposed to carry out the operation.
- (4) Subsection (3) applies whether or not the operation would take place on land within a site of special scientific interest.
- (5) The authority must not decide whether to give its permission until the expiry of the period of 28 days beginning with the date of the notification to SNH unless SNH has notified the authority that it need not wait until then.
- (6) The authority must have regard to any advice received from SNH—
  - (a) in deciding whether to give its permission, and
  - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to its permission.
- (7) Subsection (8) applies where the authority does not follow any such advice which—
  - (a) advises it against permitting an operation, or
  - (b) advises it to attach certain conditions to a permission.
- (8) Where this subsection applies—
  - (a) the permission given by the authority is subject to the conditions set out in subsection (10), and
  - (b) the authority must give notice in accordance with subsection (9) to SNH and the applicant for permission.
- (9) A notice given under subsection (8)(b) must set out the permission given and its terms and must include a statement specifying—
  - (a) what the authority has done, or proposes to do, in consequence of the advice given by SNH,
  - (b) that in giving permission or, as the case may be, attaching conditions to the permission the authority has not followed advice received from SNH under subsection (6), and
  - (c) the conditions set out in subsection (10).
- (10) The conditions referred to in subsections (8)(a) and (9)(c) are that—
  - (a) the permitted operation must not be commenced before the end of the period of 28 days beginning with the date on which notice under subsection (8)(b) is given, and
  - (b) the operation is carried out in such a way as to give rise to as little damage or disturbance as is reasonably practicable in all the circumstances to the natural feature referred to in subsection (3).

#### **Commencement Information**

**I15** S. 15(1)s. 15(3)-(10) in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**I16** S. 15(2) in force at 1.10.2004 by S.S.I. 2004/407, art. 2(a)

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## **16 Operations by owners or occupiers of sites of special scientific interest**

- (1) An owner or occupier of land within a site of special scientific interest must not carry out, or cause or permit to be carried out, an operation requiring consent on the land except—
  - (a) with the written consent of SNH given on an application under subsection (2), or
  - (b) where section 17(1) applies.
- (2) An application for such consent must specify—
  - (a) the nature of the operation,
  - (b) the proposed dates of commencement and completion, and
  - (c) the land on which it is proposed to carry out the operation.
- (3) On an application under subsection (2) SNH may—
  - (a) give consent to the operation being carried out, whether or not subject to conditions, or
  - (b) refuse such consent.
- (4) The conditions referred to in subsection (3)(a) may, in particular, provide—
  - (a) that, despite the terms of the application under subsection (2), the operation may be carried out—
    - (i) only in such manner as SNH may specify,
    - (ii) on part only of the land on which the owner or occupier wishes the operation to be carried out,
  - (b) that the operation may be carried out only for, or within, such period as SNH may specify.
- (5) SNH may, by giving notice to the owner or occupier to whom consent to carry out an operation has been given, modify or withdraw its consent—
  - (a) on completion of a review of it under section 6(4), or
  - (b) where SNH considers that the carrying out of the operation requiring consent in accordance with the consent will damage any natural feature specified in an SSSI notification in a manner not foreseen by SNH at the time it gave consent.
- (6) Consent may not be modified or withdrawn under subsection (5)(b) without the agreement of the Scottish Ministers.
- (7) A modification or withdrawal under subsection (5)(a) has effect from—
  - (a) the expiry of the time limit for appealing against it, or
  - (b) where an appeal is made, its withdrawal or final determination.
- (8) A modification or withdrawal under subsection (5)(b) has effect on notice of it being given.
- (9) Where, under this section—
  - (a) SNH—
    - (i) refuses to consent to an operation being carried out,
    - (ii) makes its consent subject to conditions, or
    - (iii) modifies or withdraws its consent, and
  - (b) it considers, having had regard to any guidance issued or approved under section 54(1) so far as relating to circumstances in which it should offer to

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

enter into a management agreement, that, despite the decision referred to in paragraph (a), it should offer to enter into such an agreement with the applicant or, as the case may be, the person to whom the consent was given,

it must offer to enter into such an agreement on such terms and conditions (including provision for payment to the applicant by SNH) as, having regard to the guidance, it thinks fit.

- (10) SNH must give an applicant reasons for a decision by virtue of this section—
- (a) to make its consent subject to conditions,
  - (b) to refuse consent,
  - (c) to modify or withdraw its consent,
  - (d) where paragraph (a) of subsection (9) applies, not to offer to enter into a management agreement in pursuance of that subsection.

#### Commencement Information

**I17** S. 16 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## 17 Operations by owners or occupiers of sites of special scientific interest: authorised operations

- (1) SNH's consent under section 16 is not required in relation to the carrying out of an operation requiring consent—
- (a) in respect of which permission has been given by a relevant regulatory authority in accordance with section 15,
  - (b) which is authorised by a planning permission granted on an application under Part III of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - (c) which is an emergency operation particulars of which (including details of the emergency) are notified to SNH as soon as practicable after the necessity for the operation becomes apparent,
  - (d) in accordance with the terms of a management agreement between SNH and the person carrying out the operation or causing or permitting it to be carried out, or
  - (e) which is carried out as required by a land management order.
- (2) Subsection (3) applies where—
- (a) an owner or occupier of land within a site of special scientific interest carries out, or causes or permits to be carried out, an operation which would, but for subsection (1)(a) or (c), require SNH's consent, and
  - (b) the operation damages any natural feature specified in an SSSI notification.
- (3) Where this subsection applies the owner or occupier must—
- (a) consult SNH as to the manner in which the natural feature should be restored to its former condition, and
  - (b) restore it, so far as is reasonably practicable, to that condition in accordance with any advice given by SNH in pursuance of paragraph (a).
- (4) Section 16 and this section do not apply to an owner or occupier being a public body or office-holder acting in the exercise of its functions.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

### Commencement Information

**I18** S. 17 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## 18 Appeals in connection with operations requiring consent

- (1) An owner or occupier of land within a site of special scientific interest who is aggrieved—
- (a) by a condition imposed under subsection (3)(a) of section 16,
  - (b) by a decision under subsection (3)(b) of that section to refuse consent,
  - (c) by a decision under subsection (5) of that section to modify or withdraw consent,
  - (d) by a decision, where paragraph (a) of subsection (9) of that section applies, not to enter into a management agreement in pursuance of that subsection,
  - (e) by the terms and conditions (including any provision for payment by SNH) on which SNH has offered to enter into a management agreement in pursuance of that subsection,

may appeal to the Scottish Land Court.

- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which SNH notified the appellant of the decision being appealed.
- (3) If, within—
- (a) the period of 4 months beginning on the date on which the owner or occupier seeking the consent made an application under section 16(2), or
  - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,

SNH neither gives nor refuses the consent sought in the application, SNH is to be treated, for the purposes of this section, as having refused consent on the day on which the period expired and an appeal may be made and determined under this section accordingly.

- (4) If, within—
- (a) the period of 4 months beginning on the date on which SNH—
    - (i) refuses consent to an operation being carried out,
    - (ii) makes its consent subject to conditions, or
    - (iii) modifies or withdraws its consent, or
  - (b) such longer period, beginning on that date, as may be agreed in writing between SNH and the owner or occupier,

SNH has not offered to enter into a management agreement in pursuance of section 16(9), SNH is to be treated, for the purposes of this section, as having decided not to so offer on the day on which the period expired and an appeal may be made and determined under this section accordingly.

- (5) The Scottish Land Court must determine an appeal made under subsection (1) on the merits rather than by way of review and may do so by—
- (a) affirming the decision appealed against,
  - (b) where the appeal is against a refusal of consent, directing SNH to give consent,
  - (c) where the appeal is as to the conditions to which a consent is subject, quashing all or any of those terms or conditions,

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (d) where the appeal is against a decision not to offer to enter into a management agreement, directing SNH to so offer,
  - (e) where the appeal is as to the terms and conditions of a management agreement, quashing all or any of those terms or conditions,
  - (f) making such other order as it thinks fit.
- (6) The Scottish Land Court may direct SNH—
- (a) where it determines an appeal under paragraph (b) or (c) of subsection (5), as to any conditions to which its consent to the carrying out of the operation requiring consent are to be subject,
  - (b) where it determines an appeal under paragraph (d) or (e) of that subsection, as to terms and conditions of the management agreement (including provision for payment by SNH) which it must offer to enter into.

#### **Commencement Information**

**119** S. 18 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### *Offences and byelaws*

#### **19 Offences in relation to sites of special scientific interest**

- (1) Any person who intentionally or recklessly damages any natural feature specified in an SSSI notification is, subject to subsection (2), guilty of an offence.
- (2) Any person who does anything which would, but for this subsection, amount to an offence under subsection (1) is not guilty of the offence if it is shown that—
  - (a) the act was the incidental result of a lawful operation,
  - (b) the person who carried out the lawful operation—
    - (i) took reasonable precautions for the purpose of avoiding carrying out the act, or
    - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
  - (c) that person took such steps as were reasonably practicable in all the circumstances to minimise the damage caused.
- (3) Any person who, without reasonable excuse—
  - (a) contravenes section 13(1) or 16(1), or
  - (b) fails to comply with section 14(5)(b) or 17(3)(b),is guilty of an offence.
- (4) Any person guilty of an offence under subsection (1) or (3) is liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.
- (5) It is not a defence in proceedings for an offence under subsection (3) of contravening section 13(1) or 16(1) that the carrying out of the operation did not damage any natural feature specified in an SSSI notification.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I20** S. 19 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**20 Byelaws**

- (1) SNH may make byelaws for the protection of a site of special scientific interest.
- (2) The following provisions of the National Parks and Access to the Countryside Act 1949 (c. 97) apply in relation to byelaws under subsection (1) as they apply in relation to byelaws under section 20 of that Act—
  - (a) subsections (2) and (3) of section 20 (reading references in those subsections to nature reserves as references to sites of special scientific interest), and
  - (b) sections 106 and 107.

**Commencement Information**

**I21** S. 20 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Supplementary*

**21 Advisory Committee on sites of special scientific interest**

- (1) There is to continue to be a committee (“the Advisory Committee”) with the advisory function relating to sites of special scientific interest conferred on it by this section.
- (2) The convener and other members of the Advisory Committee are to be appointed by the Scottish Ministers, on such terms and conditions as they may determine, from among persons appearing to them to have scientific qualifications and experience in relation to flora or fauna or the geological or geomorphological features of land.
- (3) Those terms and conditions must include arrangements for the payment by SNH of remuneration and allowances.
- (4) A member of SNH, or of any committee appointed by it, may not be appointed to the Advisory Committee.
- (5) The Scottish Ministers may, from time to time, give directions to the Advisory Committee as to its procedure.
- (6) Subsection (8) applies where—
  - (a) any person with an interest in land which is a site of special scientific interest makes a representation to SNH in relation to—
    - (i) any reason specified in an SSSI notification, or notification under section 5(1), in pursuance of section 3(4)(a)(ii), or
    - (ii) any reason specified in a notification under subsection (1) of section 9 in pursuance of subsection (4)(a)(ii) of that section,
  - (b) that person does not agree to withdraw the representation, and
  - (c) the condition set out in subsection (7) is met.
- (7) That condition is that the representation is made—



*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (a) before the expiry of the time limit for making representations in pursuance of paragraph 3(c) of schedule 1 with respect to the notification in question, or
  - (b) if that time limit has expired, not less than 10 years have elapsed from the date—
    - (i) on which the last such representation was made, or
    - (ii) where no such representation has been made previously, on which the notification in question was given.
- (8) Where this subsection applies SNH must—
- (a) refer the matter to the Advisory Committee,
  - (b) consider any advice given by the Advisory Committee on the matter, and
  - (c) take such action as it thinks fit in consequence of any such advice.

#### Commencement Information

**I22** S. 21 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## 22 SSSI register

- (1) The Keeper of the Registers of Scotland (“the Keeper”) must keep a register containing—
- (a) such information relating to SSSI notifications as may be required by regulations under subsection (3), and
  - (b) such information relating to—
    - (i) notifications given under section 5(1), 6(5), 7(3), 8(1) or 9(1),
    - (ii) notices given under paragraph 10 or 15 of schedule 1,as may be so required.
- (2) The Keeper must ensure that the register is, at all reasonable times, available for public inspection.
- (3) The Scottish Ministers may by regulations make provision—
- (a) as to the form and manner in which the register is to be kept,
  - (b) as to the information which the register is to contain,
  - (c) as to amendment of the register,
  - (d) requiring SNH to send to the Keeper for registration in the register, in such form and manner as the regulations may specify, copies of the notifications and notices specified in subsection (1)(a) and (b) and such other documents and information as the regulations may specify,
  - (e) as to the provision, on payment of such fee (if any) as may be so specified, of reports in relation to the register and copies and extracts of information in the register and as to the evidential value of such copies and extracts.

#### Commencement Information

**I23** S. 22(1)(2) in force at 30.6.2008 by S.S.I. 2008/193, art. 2(b)

**I24** S. 22(3) in force at 2.6.2008 by S.S.I. 2008/193, art. 2(a)

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## CHAPTER 2

### NATURE CONSERVATION ORDERS

#### **Modifications etc. (not altering text)**

- C3** Pt. 2 Ch. 2 applied (with modifications) by S.I. 1994/2716, regs. 19, 20 (as substituted (29.11.2004) by Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), 9 (with regs. 20-21))

### **23 Nature conservation orders**

- (1) Where the Scottish Ministers consider that, for either or both of the purposes specified in subsection (2), the carrying out of an operation on land of a description specified in subsection (3) should be wholly or partly prohibited, they may make an order (a “nature conservation order”)—
  - (a) specifying the operation,
  - (b) specifying the circumstances (if any) in which the carrying out of the operation is not prohibited, and
  - (c) prohibiting any person from carrying it out on such land other than in those circumstances.
- (2) The purposes referred to in subsection (1) are—
  - (a) the conservation of any natural feature by reason of which land (whether or not the land in question) is a site of special scientific interest or, as the case may be, is otherwise considered by the Scottish Ministers to be of special interest,
  - (b) compliance with an international obligation.
- (3) The land referred to in subsection (1) is—
  - (a) land which is, or forms part of, a site of special scientific interest,
  - (b) land which is not, or does not form part of, a site of special scientific interest but is, in the opinion of the Scottish Ministers, of special interest by reason of any of its natural features,
  - (c) land which is contiguous to, or which the Scottish Ministers consider to be otherwise associated with, land of the type described in paragraph (a) or (b), or
  - (d) any combination of land of the types described in paragraphs (a) to (c).
- (4) The circumstances which may be specified in a nature conservation order by virtue of subsection (1)(b) include, for example, the carrying out of an operation—
  - (a) at a particular time,
  - (b) in a particular manner, or
  - (c) in accordance with particular conditions.
- (5) Each operation specified in a nature conservation order is, so far as prohibited by the order in relation to the land to which the order relates, referred to in this Act as a “prohibited operation”.
- (6) A nature conservation order has effect on being made.
- (7) A nature conservation order ceases to have effect—
  - (a) on the date on which a decision not to confirm it is made under paragraph 5 of schedule 2,

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (b) if no decision is made under that paragraph within the period mentioned in sub-paragraph (a) of that paragraph or that period as extended under paragraph 12 of that schedule, at the end of that period, or
- (c) on the date on which an order under section 24(1) revoking it is made.

**Commencement Information**

**I25** S. 23 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

**24 Amendment or revocation of nature conservation orders**

- (1) The Scottish Ministers may by order amend or revoke a nature conservation order (and an order under this subsection is, in this Act, referred to as an amending order or, as the case may be, a revoking order).
- (2) An amending order may—
  - (a) add to the prohibited operations specified in a nature conservation order, modify the description of any prohibited operation so specified or remove any prohibited operation so specified from the order,
  - (b) amend any circumstances specified in a nature conservation order in relation to an operation by virtue of section 23(1)(b),
  - (c) extend or restrict the area of land to which a nature conservation order relates.
- (3) An amending order has effect on being made.
- (4) A nature conservation order which is amended by an amending order has effect, for so long as the amending order has effect, as amended.
- (5) A revoking order may revoke a nature conservation order in relation to part only of the land to which the nature conservation order relates.
- (6) A revoking order has effect on being made.

**Commencement Information**

**I26** S. 24 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

**25 Nature conservation orders and related orders: procedure**

Schedule 2 sets out procedure relating to nature conservation orders, amending orders and revoking orders.

**Commencement Information**

**I27** S. 25 in force at 29.11.2004 by [S.S.I. 2004/495, art. 2](#)

**26 Review of nature conservation orders**

- (1) The Scottish Ministers may, when they think fit, review a nature conservation order for the purposes of determining whether they should make an amending order or a revoking order in relation to it.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (2) The Scottish Ministers must carry out—
- (a) the first such review within 6 years of the date on which the nature conservation order was made,
  - (b) any subsequent such review within 6 years of the previous review.

**Commencement Information**

**I28** S. 26 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**27 Offences in relation to nature conservation orders**

- (1) Any person who carries out, or causes or permits to be carried out, a prohibited operation on any land to which a nature conservation order relates is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.
- (2) It is not a defence in proceedings for an offence under subsection (1) that the carrying out of the prohibited operation did not damage any natural feature of the land to which the nature conservation order relates.

**Commencement Information**

**I29** S. 27 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**28 Reports**

A report submitted by SNH under section 10(2) (annual report) of the Natural Heritage (Scotland) Act 1991 (c. 28) for any year must set out particulars of any land in relation to which a nature conservation order, amending order or revoking order has come into effect during that year.

**Commencement Information**

**I30** S. 28 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**CHAPTER 3**

LAND MANAGEMENT ORDERS

**Modifications etc. (not altering text)**

**C4** Pt. 2 Ch. 3 applied (with modifications) by S.I. 1994/2716, regs. 19, 21 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), [9](#) (with regs. 20-21))

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*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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## **29 Proposals for land management orders**

- (1) This section applies to—
- (a) land which is, or forms part of, a site of special scientific interest,
  - (b) land which is contiguous to, or which SNH considers to be otherwise associated with, a site of special scientific interest,
  - (c) any combination of land of the type described in paragraphs (a) and (b).
- (2) Where—
- (a) any of subsections (3) to (5) applies, and
  - (b) SNH considers that an order under section 30(1) (a “land management order”) in relation to the land is necessary or expedient for the purpose of conserving, restoring or otherwise enhancing any natural feature specified in an SSSI notification,
- SNH may propose to the Scottish Ministers that they make a land management order.
- (3) This subsection applies where—
- (a) SNH has offered to enter into a management agreement in relation to land to which this section applies for the purpose specified in subsection (2)(b), and
  - (b) the offeree has refused or failed to enter into the agreement.
- (4) This subsection applies where a person fails to comply with a management agreement entered into with SNH, for the purpose specified in subsection (2)(b), in relation to land to which this section applies.
- (5) This subsection applies where SNH has not, by reason of not being aware of the name or address of any owner or occupier of land to which this section applies, been able to offer to enter into a management agreement in relation to the land.
- (6) Subsection (5) does not apply unless—
- (a) SNH has given notice in accordance with section 48(10) stating that it wishes to offer to enter into a management agreement in relation to the land, and
  - (b) 28 days have passed since the notice was given.
- (7) A proposal under subsection (2) must—
- (a) describe the land to which it relates in a manner which would be sufficient to enable a document relating to the land to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,
  - (b) be accompanied by a map on which the land is delineated,
  - (c) describe the natural feature in question,
  - (d) explain why SNH offered to, or wishes to offer to, enter into a management agreement in relation to the land or, as the case may be, specify the failure to comply with a management agreement which has been entered into,
  - (e) specify—
    - (i) any operations (including any operations requiring consent) which should be carried out on the land for the purpose of conserving, restoring or otherwise enhancing that natural feature,
    - (ii) the persons who should carry out the operations, and
    - (iii) how and when the operations should be carried out,
  - (f) state—
    - (i) the costs which the persons referred to in paragraph (e)(ii) are likely to incur by so doing, and

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (ii) the amounts which SNH should pay to those persons in respect of those costs, and
- (g) specify any operations which should not be carried out on the land.

**Commencement Information**

**I31** S. 29 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**30 Power to make land management orders**

- (1) The Scottish Ministers must, within 3 months of the expiry of the period during which representations on a proposal for a land management order may be made in pursuance of paragraph 3(c) of schedule 3, after considering the matters specified in subsection (2)—
  - (a) make a land management order in the manner which has been proposed,
  - (b) make such other land management order as the Scottish Ministers think fit in relation to the land, or any part of the land, to which the proposal relates, or
  - (c) refuse to make a land management order in relation to that land or any part of it.
- (2) Those matters are—
  - (a) the proposal under section 29(2) and the accompanying map,
  - (b) any representations made to them in pursuance of paragraph 3(c) of schedule 3, and
  - (c) any information provided to them in pursuance of paragraph 6 of that schedule in relation to the proposal.

**Commencement Information**

**I32** S. 30 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**31 Content of land management orders**

- (1) A land management order must—
  - (a) describe the land to which the order relates in a manner which would be sufficient to enable the order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland,
  - (b) be accompanied by a map on which the land is delineated,
  - (c) describe the natural feature which is to be conserved, restored or otherwise enhanced in pursuance of the order,
  - (d) specify—
    - (i) the operations which are to be carried out on the land for the purpose of conserving, restoring or otherwise enhancing that natural feature,
    - (ii) the persons who are to carry out those operations, and
    - (iii) how and when those operations are to be carried out,
  - (e) specify any operations which must not be carried out on the land,
  - (f) specify the date on which the order is to come into effect and the period for which it is to have effect, and

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (g) set out the circumstances in which an appeal may be made under section 34(1) against the decision to make the order.
- (2) Any operation specified in a land management order by virtue of subsection (1)(e) is, in relation to the land to which the order relates, referred to in this Act as an “excluded operation”.
- (3) A land management order may provide for the making of payments by SNH to any person in respect of reasonable costs incurred by the person in carrying out an operation specified in the order by virtue of subsection (1)(d)(i).

**Commencement Information**

**I33** [S. 31](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**32 Review of land management orders**

- (1) The Scottish Ministers may, when they think fit, review a land management order for the purposes of determining whether they should make an order amending or revoking it.
- (2) The Scottish Ministers must carry out—
  - (a) the first such review within 6 years of the date on which the land management order was made,
  - (b) any subsequent such review within 6 years of the previous review.
- (3) If, on completion of a review, the Scottish Ministers decide that the land management order should be amended or revoked they may make an order to that effect.

**Commencement Information**

**I34** [S. 32](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**33 Land management orders and related orders: procedure**

Schedule 3 sets out procedure relating to land management orders and orders under section 32(3).

**Commencement Information**

**I35** [S. 33](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**34 Appeals in connection with land management orders and related orders**

- (1) Any owner or occupier of land to which a land management order relates who is aggrieved by—
  - (a) a decision of the Scottish Ministers to make a land management order or an order under section 32(3), or
  - (b) the terms or conditions of such an order,may appeal to the Scottish Land Court.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the Scottish Ministers gave notice to the appellant of the decision being appealed.
- (3) The Scottish Land Court must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
  - (a) affirming the order in question,
  - (b) directing the Scottish Ministers to amend the order in such manner as the Court may specify,
  - (c) directing the Scottish Ministers to revoke the order,
  - (d) making such other order as it thinks fit.

**Commencement Information**

**I36** S. 34 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**35 Effect of land management orders**

- (1) A land management order has effect from—
  - (a) the expiry of the time limit for appealing against the decision to make the land management order, or
  - (b) where such an appeal is made, its withdrawal or final determination.
- (2) A land management order ceases to have effect—
  - (a) on the expiry of the time limit for appealing against the decision to make an order under section 32(3) revoking the land management order, or
  - (b) where such an appeal is made, on its withdrawal or final determination.
- (3) A land management order has effect as amended by an order under section 32(3)—
  - (a) from the expiry of the time limit for appealing against the decision to make the order under that section, or
  - (b) where such an appeal is made, from its withdrawal or final determination.

**Commencement Information**

**I37** S. 35 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**36 Offences in relation to land management orders**

- (1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a land management order, an operation which the person is required by the order to carry out is guilty of an offence.
- (2) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, an excluded operation is guilty of an offence.
- (3) Any person guilty of an offence under subsection (1) or (2) is liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.



*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

#### Commencement Information

**I38** S. 36 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### 37 Enforcement of land management orders

- (1) Subsection (2) applies where SNH considers—
  - (a) that any operation required to be carried out by a land management order has not been carried out within the period or by the date specified in it, or
  - (b) that any such operation has been carried out otherwise than in the manner so specified.
- (2) Where this subsection applies SNH—
  - (a) is not required to make any payment (and may recover any payments made) in pursuance of the land management order in relation to the operation in question, and
  - (b) may—
    - (i) carry out the operation, or carry out such further work as is necessary to ensure that it is carried out, in the manner so specified, and
    - (ii) recover from the person whom the land management order required to carry out the operation any additional expenses reasonably incurred by it in doing so.
- (3) The reference in subsection (2) to additional expenses incurred by SNH in carrying out an operation or further works is a reference to expenses incurred by SNH in so doing less the amount which SNH would, if that subsection had not applied, be required to pay in relation to the carrying out of the operation.

#### Commencement Information

**I39** S. 37 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## CHAPTER 4

### GENERAL AND SUPPLEMENTARY

### 38 Ramsar sites

- (1) Where a wetland situated in Scotland is designated under paragraph 1 of article 2 of the Ramsar Convention for inclusion in the list of wetlands of international importance referred to in that article, the Scottish Ministers must give SNH notice of the designation.
- (2) SNH must, on receipt of such a notice, give notice of the designation to—
  - (a) every owner and occupier of the wetland or any part of it,
  - (b) the planning authority for the district in which the wetland, or any part of it, is situated,

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (c) where the wetland, or any part of it, is situated in a National Park and the National Park authority for the National Park is not notified under paragraph (b), the National Park authority,
  - (d) every statutory undertaker which SNH considers may carry out operations which may affect the wetland or any part of it, and
  - (e) every relevant regulatory authority which SNH considers likely to have functions which relate to the wetland or any part of it.
- (3) The Ramsar Convention is the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by—
- (a) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982,
  - (b) the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987, and
  - (c) any further amendments coming into force from time to time,
- and the reference in subsection (1) to paragraph 1 of article 2 is, if necessary in consequence of any such further amendment or the coming into force of any instrument replacing that Convention, to be taken as referring to the appropriate successor provision.

#### **Commencement Information**

**I40** S. 38 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### **39 Acquisition of land by SNH**

- (1) SNH may—
- (a) acquire by agreement,
  - (b) with the authorisation of the Scottish Ministers, acquire compulsorily,
- all or any part of land of a description specified in subsection (2).
- (2) The land referred to in subsection (1) is—
- (a) land which is a site of special scientific interest,
  - (b) any other land to which a nature conservation order or land management order applies,
  - (c) any other land which is contiguous to, or which SNH considers to be otherwise associated with, land of the type described in paragraph (a) or (b).
- (3) SNH may acquire land under subsection (1)(b) only where it is necessary to do so for the purpose of securing the conservation, restoration or other enhancement of any protected natural feature.
- (4) The power to acquire land under this section includes power to acquire a servitude or other right in or over land by the creation of a new right.
- (5) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1)(b) as if—
- (a) this section were contained in an Act in force immediately before the commencement of that Act,
  - (b) references in that Act to a local authority were references to SNH.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (6) SNH may manage land acquired under this section.
- (7) If SNH disposes of land acquired under subsection (1)(b), or of any interest in it, it must do so on terms designed to achieve the purpose for which the land was acquired.

**Modifications etc. (not altering text)**

**C5** S. 39 applied (with modifications) by by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), 9 (with regs. 20-21))

**Commencement Information**

**I41** S. 39 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## 40 Restoration orders

- (1) Where—
  - (a) a person is convicted of an offence under section 19(1), or
  - (b) the operation in respect of which a person is convicted of an offence under section 19(3), 27(1) or 36(2) has damaged any protected natural feature,the court by which the person is convicted may, in addition to dealing with the person in any other way, by order require the person to carry out, within such period as may be specified in the order, such operations for the purpose of restoring, so far as is reasonably practicable, the protected natural feature to its former condition as may be so specified.
- (2) Before making an order under subsection (1), the court must have regard to any representations by SNH as to the manner in which the aspect should be restored.
- (3) At any time before an order under subsection (1) has been complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or modify the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.
- (4) If, within the period specified in an order under subsection (1), the person against whom the order was made fails, without reasonable excuse, to comply with it, the person is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.
- (5) If, within the period specified in an order under subsection (1), any operations specified in the order have not been carried out in accordance with the order, SNH may—
  - (a) carry out those operations, and
  - (b) recover from the person against whom the order was made any expenses reasonably incurred by it in doing so.
- (6) An order under subsection (1) is, for the purposes of any appeal or review, to be treated as a sentence.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C6** S. 40 applied (with modifications) by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with [regs. 20-21](#)))

**Commencement Information**

- I42** S. 40 in force at 29.11.2004 by [S.S.I. 2004/495](#), **art. 2**

**41 Signs etc.**

- (1) SNH may—
- (a) put up, maintain or remove signs on any land, or
  - (b) take such other action as it considers appropriate,
- for the purpose of providing information to the public in relation to any land to which an SSSI notification, nature conservation order or land management order relates or in respect of which byelaws have been made under section 20(1).
- (2) Any person who damages or destroys—
- (a) any sign put up by SNH in pursuance of subsection (1),
  - (b) any notice affixed by SNH or the Scottish Ministers to an object on land for the purposes of giving notification under or by virtue of this Part,
- is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

**Modifications etc. (not altering text)**

- C7** S. 41 applied (with modifications) by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with [regs. 20-21](#)))

**Commencement Information**

- I43** S. 41 in force at 29.11.2004 by [S.S.I. 2004/495](#), **art. 2**

**42 Change of owner or occupier**

- (1) This section applies where a person with an interest in land within a site of special scientific interest or to which a nature conservation order or land management order relates—
- (a) disposes of the interest, or
  - (b) where the person is the owner of the land, becomes aware that it is occupied by an additional or a different occupier.
- (2) The person with an interest in the land must, within the period of 28 days beginning with the date on which the person disposed of the interest or became aware of the change in occupation, send notices to SNH and—
- (a) in the case of a disposal, to the person to whom the interest is disposed, or
  - (b) in the case of a change in occupation, to the additional or different occupier.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (3) A notice given under subsection (2) to SNH must specify the land concerned and—
- (a) in the case of a disposal, specify the date on which the person disposed of the interest in the land and the name and address of the person to whom the person disposed of the interest,
  - (b) in the case of a change in occupation, the date, to the best of the owner's knowledge, on which the change took place and, as far as the owner knows them, the name and address of the additional or different occupier.
- (4) A notice given under subsection (2) to a person to whom the interest is disposed of or to an additional or different occupier must—
- (a) specify the land concerned and state that an SSSI notification, nature conservation order or, as the case may be, land management order has effect in relation to the land, and
  - (b) where reasonably practicable, be accompanied by a copy of the relevant—
    - (i) SSSI notification (and any notification under section 5(1), 6(5), 7(3), 8(1) or 9(1), or notice under paragraph 10 of schedule 1, which amends the SSSI notification),
    - (ii) nature conservation order (and any amending order or revoking order which amends or partly revokes the nature conservation order), or
    - (iii) land management order (and any order under section 32(3) which amends or partly revokes the land management order),as the case may be.
- (5) For the purposes of this section, a person is treated as disposing of an interest in land if the person disposes of it by way of sale, exchange or lease, or by way of the creation of any servitude, right or privilege over that interest or by any other way except the grant of a standard security.

#### **Commencement Information**

**I44** S. 42 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### **43 Powers of investigation etc.: police**

- (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, without warrant—
- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person,
  - (b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person's possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing,
  - (c) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence.
- (2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling or lockfast premises.
- (3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Part has been committed

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

- (4) A warrant under subsection (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
- (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.
- (6) A constable who enters any land in the exercise of a power conferred by this section—
  - (a) may—
    - (i) be accompanied by any other persons, and
    - (ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power,
  - (b) may take samples of any articles or substances found there and remove the samples from the land.
- (7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
- (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.

**Modifications etc. (not altering text)**

**C8** S. 43 applied (with modifications) by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20-21))

**Commencement Information**

**I45** S. 43 in force at 29.11.2004 by [S.S.I. 2004/495](#), **art. 2**

**44 Powers of entry: authorised persons**

- (1) Any person authorised in writing by SNH may, at any reasonable time, enter any land for any of the following purposes—
  - (a) to determine whether to give or confirm an SSSI notification or a notification under section 5(1), 6(5), 7(3), 8(1) or 9(1) in relation to the land,
  - (b) to assess the condition of any protected natural feature of the land,
  - (c) to determine whether or not to offer to enter into a management agreement in relation to the land or to ascertain the terms on which it should offer to enter into such an agreement,
  - (d) to ascertain whether a management agreement is being, or has been, complied with,
  - (e) to determine whether or not to formulate a proposal under section 29(2) for a land management order,

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (f) to ascertain whether an offence under section 19(1) or (3), 27(1) or 36(1) or (2) or under byelaws made by virtue of section 20 is being, or has been, committed on or in relation to the land,
  - (g) to ascertain whether an operation required to be carried out by a land management order or an order under section 40(1) has been carried out in accordance with the order,
  - (h) to carry out operations in pursuance of section 37 or 40(5),
  - (i) to determine any question in relation to the acquisition of the land by agreement or compulsorily,
  - (j) to determine any question in relation to compensation under section 20(3) of the National Parks and Access to the Countryside Act 1949 (c. 97) as it applies in relation to byelaws made under section 20 of this Act,
  - (k) to put up, maintain or remove signs, or to do anything else, for the purposes of section 41,
  - (l) where SNH is not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).
- (2) Any person authorised in writing by the Scottish Ministers may, at any reasonable time, enter any land for any of the following purposes—
- (a) to determine whether a nature conservation order, or an amending order or revoking order, should be made in relation to the land,
  - (b) to determine whether a land management order, or an order under section 32(3) amending or revoking such an order, should be made in relation to the land,
  - (c) where the Scottish Ministers are not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).
- (3) The powers conferred by subsections (1) and (2) to enter land for any purpose mentioned in those subsections include power to enter for the same purpose any land other than that referred to in the subsection in question.
- (4) Nothing in this section authorises any person to enter a dwelling or lockfast premises.
- (5) Any person who intentionally obstructs a person acting in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Schedule 4 makes further provision about the exercise of the powers conferred by this section; and references in this section and that schedule to a power conferred by this section include references to such a power exercisable by virtue of a warrant under that schedule.

**Modifications etc. (not altering text)**

- C9** S. 44 applied (with modifications) by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), 9 (with regs. 20-21))

**Commencement Information**

- I46** S. 44 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

#### **45 SNH: power to enforce**

- (1) Compliance with sections 12(2) and 15 is enforceable by civil proceedings brought by SNH for interdict or for any other appropriate remedy.
- (2) Where, on an application by SNH, the court is satisfied that any operation being, or proposed to be, carried out is damaging or is likely to damage—
  - (a) any protected natural feature, or
  - (b) any other natural feature of Scotland which is of national importance,
 the court may make such order (whether for interdict or otherwise) as it considers appropriate.
- (3) An application under subsection (2) may be made whether or not civil proceedings under subsection (1) would be competent.
- (4) Subsections (1) and (2) do not prevent any other person who has a right to bring proceedings for compliance with the provisions specified in subsection (1) or, as the case may be, in relation to the matters referred to in subsection (2), from doing so.
- (5) In this section “the court” means the Court of Session or the sheriff.

#### **Commencement Information**

**I47** S. 45 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

#### **46 Offences: penalties and time limits**

- (1) The court must, in determining the amount of any fine to be imposed on a person convicted of an offence under this Part, have regard in particular to any financial benefit which has accrued or is likely to accrue to the person in consequence of the offence.
- (2) Summary proceedings for an offence under this Part may, subject to subsection (3), be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.
- (3) No such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence, or
  - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (4) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor’s knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

#### **Modifications etc. (not altering text)**

**C10** S. 46 applied (with modifications) by S.I. 1994/2716, regs. 19, 22 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), [9](#) (with regs. 20-21))



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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

#### **Commencement Information**

**I48** S. 46 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

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

- (1) Where an offence under this Part committed—
- (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association, or
    - (ii) purports to act in the capacity of a person so concerned,
- the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Part is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

#### **Commencement Information**

**I49** S. 47 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### **48 Notices, applications etc.**

- (1) Any—
- (a) notice, notification or consent given, or
  - (b) request for review, proposal or application (other than an application to a court) made,
- under or for the purposes of this Part must be in writing.
- (2) A reference in this Part to SNH or the Scottish Ministers giving notice or notification to the interested parties is a reference to giving notice or notification to—
- (a) every owner and occupier of the land, or any part of it, to which the notice or notification relates,

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- (b) the Scottish Ministers or, as the case may be, SNH,
  - (c) every local authority in whose area the land, or any part of it, is situated,
  - (d) where the land, or any part of it, is situated in a National Park, the National Park authority for the National Park,
  - (e) where a planning authority for the district in which the land, or any part of it, is situated is not notified under paragraph (c) or (d), that planning authority,
  - (f) every community council (within the meaning of Part IV of the Local Government (Scotland) Act 1973 (c. 65)) in whose area the land, or any part of it, is situated,
  - (g) every statutory undertaker which the person giving the notice or notification considers may carry out operations which may affect the land or any part of it,
  - (h) every relevant regulatory authority which the person giving the notice or notification considers likely to have functions which relate to the land or any part of it,
  - (i) every community body which has registered an interest in the land, or in any part of it, under Part 2 of the Land Reform (Scotland) Act 2003 (asp 2),
  - (j) every other person appearing to the person giving the notice or notification to have an interest in the land or any part of it, and
  - (k) such other persons as the person giving the notice or notification thinks fit,
- and the date on which the Scottish Ministers or, as the case may be, SNH receive a notice or notification given to the interested parties is to be treated as the date on which the notice or notification is given.
- (3) The validity of a notice or notification given to the interested parties is not affected by failure to give the notice or notification to any of the persons specified in paragraphs (a) and (f) to (k) of subsection (2).
- (4) But subsection (3) does not apply in relation to a failure to give notice or notification to an owner or occupier of land specified in subsection (2)(a) unless SNH has or, as the case may be, the Scottish Ministers have—
- (a) taken all reasonable steps to identify the owners and occupiers of the land, or any part of it, to which the notice or notification relates, and
  - (b) given the notice or notification to each owner and occupier so identified.
- (5) The Scottish Ministers may by order modify subsection (2) so as to—
- (a) add or remove a type of person to or, as the case may be, from those referred to in that subsection, or
  - (b) amend any description of a type of person so referred to.
- (6) Any reference in this Part to a notice or notification being given to a person is, unless subsection (10) applies, to be construed as a reference to its being—
- (a) delivered to the person to whom it is to be given, or
  - (b) sent in a prepaid registered letter, or by the recorded delivery service, addressed—
    - (i) where that person is an incorporated company or body, to the secretary, clerk or chief executive of the company or body at its registered or principal office,
    - (ii) where that person is a public office-holder, to the office-holder at the office-holder's principal office,
    - (iii) in any other case, to the person at that person's usual or last known place of abode.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (7) Any reference in this Part to a request for review, a proposal or an application (other than an application to a court) being made, or a consent being given, is to be construed as a reference to its being—
- (a) delivered or sent in the manner described in subsection (6), or
  - (b) transmitted to the person to whom it is being made or given in some other reasonable manner (including by electronic means).
- (8) A request for review, proposal, application or consent which is transmitted by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (9) Subsection (10) applies where—
- (a) SNH is to give notice to the owners and occupiers of land in pursuance of section 29(6),
  - (b) any other notice or notification is to be given under this Part to the owners and occupiers of land and SNH is or, as the case may be, the Scottish Ministers are not aware of the name or address of any owner or occupier of the land.
- (10) Where this subsection applies a copy of the notice or notification must be addressed to “The owners and any occupiers” of the land (describing it) and a copy of it must be affixed to some conspicuous object on the land (and so doing is to be treated as sufficient for the purposes of providing notice or notification to each owner or occupier whose name and address is unknown).
- (11) Subsection (12) applies where, in giving to the interested parties—
- (a) a notification under section 3(1), 5(1) or 9(1), or
  - (b) a notice under paragraph 3(a) of schedule 2,
- SNH fails or, as the case may be, the Scottish Ministers fail to give the notification or notice to any interested party specified in subsection (2)(a).
- (12) Where this subsection applies SNH or, as the case may be, the Scottish Ministers—
- (a) must, if it or they become aware of the identity of, or are requested to do so by, any such interested party, provide—
    - (i) a copy of the notification or notice in question, and
    - (ii) such further information in relation to the notification or notice in question as it or they consider appropriate,to the interested party, and
  - (b) must take such action as it or they think fit in consequence of any representation made by the interested party.

#### **Commencement Information**

**I50** S. 48 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## **49 Transitional arrangements**

- (1) Schedule 5 contains transitional and transitory provisions and savings consequential on this Part.
- (2) This section and that schedule are without prejudice to sections 53(2)(a) and 56.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

#### Commencement Information

**I51** S. 49 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

### PART 3

#### PROTECTION OF WILDLIFE

#### 50 Protection of wildlife

Schedule 6 sets out amendments and repeals to the 1981 Act and to the Protection of Badgers Act 1992 (c. 51).

#### Commencement Information

**I52** S. 50 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

#### 51 Scottish Marine Wildlife Watching Code

- (1) SNH must prepare and issue a code, to be known as the Scottish Marine Wildlife Watching Code, setting out recommendations, advice and information relating to commercial and leisure activities involving the watching of marine wildlife.
- (2) The Code may, in particular, contain information on—
  - (a) activities which are likely to disturb marine wildlife,
  - (b) circumstances in which marine wildlife may be approached, and
  - (c) the manner in which marine wildlife may best be viewed with minimum disturbance.
- (3) SNH must review the Code from time to time and may, following such a review, revise it.
- (4) SNH must—
  - (a) before preparing the Code, and
  - (b) when reviewing it,
 consult such persons appearing to them to have an interest in marine wildlife watching and such other persons as it thinks fit.
- (5) SNH must—
  - (a) publish the Code and any revisions to it in such manner (including on the internet or by other electronic means) as it thinks fit, and
  - (b) promote awareness and understanding of the Code and any revisions to it.

#### Commencement Information

**I53** S. 51 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(c)

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## PART 4

### SCOTTISH FOSSIL CODE

#### 52 Scottish Fossil Code

- (1) SNH must prepare and issue a code, to be known as the Scottish Fossil Code, setting out recommendations, advice and information relating to fossils.
- (2) The Code may, in particular, contain information on—
  - (a) activities which are likely to damage fossils,
  - (b) circumstances in which fossils should not be removed from land,
  - (c) the manner in which fossils removed from land should be kept or otherwise treated.
- (3) SNH must review the Code from time to time and may, following such a review, revise it.
- (4) SNH must—
  - (a) before preparing the Code, and
  - (b) when reviewing it,consult such persons appearing to them to have an interest in the geological features of land and such other persons as it thinks fit.
- (5) SNH must—
  - (a) publish the Code and any revisions to it in such manner (including on the internet or by other electronic means) as it thinks fit, and
  - (b) promote awareness and understanding of the Code and any revisions to it.

#### Commencement Information

**I54** S. 52 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## PART 5

### GENERAL

#### 53 Orders and regulations: general

- (1) Any power of the Scottish Ministers under this Act to make orders (except nature conservation orders, amending orders, revoking orders, land management orders and orders under section 32(3) and paragraph 11(3) of schedule 5) or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes and different areas.
- (3) An order under section 56 may modify any enactment, instrument or document.

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*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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- (4) A statutory instrument containing an order or regulations under this Act (except sections 56 (where subsection (5) applies) and 59) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 56 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

## 54 Guidance

- (1) The Scottish Ministers may issue guidance (or approve guidance issued by others) containing recommendations, advice and information for the assistance of—
  - (a) public bodies and office-holders in complying with the duty under section 1(1) to further the conservation of biodiversity,
  - (b) SNH in exercising its functions under Part 2, and
  - (c) persons affected or likely to be affected by the exercise by SNH of any of those functions,
 and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).
- (2) Guidance issued or approved under subsection (1)(b) may, in particular, contain information—
  - (a) as to the circumstances in which SNH should, for the purposes of section 3(1), 5(1) or 9(1), consider land to be of special interest or, as the case may be, no longer to be of special interest,
  - (b) as to circumstances in which, and the terms and conditions on which, SNH should offer to enter into a management agreement,
  - (c) as to the amounts which SNH should pay to persons carrying out operations specified in land management orders.
- (3) Before issuing or approving guidance under subsection (1), the Scottish Ministers must consult SNH and such persons appearing to them to represent other interests concerned as they think fit.
- (4) The Scottish Ministers must publish any guidance issued by them under subsection (1) in such manner (including on the internet or by other electronic means) as they think fit.

### Commencement Information

**I55** S. 54 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(d)

## 55 Crown application

- (1) Parts 1 and 2 and this Part bind the Crown.
- (2) The amendments and repeals of enactments made by schedule 7 bind the Crown to the same extent as the enactments amended or repealed.
- (3) Part 2 applies to Crown land with the following modifications.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (4) Byelaws made by virtue of section 20 may apply to Crown land only if the appropriate authority consents.
- (5) No order may be made under section 23 or 30 in relation to Crown land unless the appropriate authority has consented to the making of the order.
- (6) An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under section 39, but only with the consent of the appropriate authority.
- (7) No contravention by the Crown of any provision made by or under Part 2 makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (8) Despite subsection (7), any provision made by or under Part 2 applies to persons in the public service of the Crown as it applies to other persons.
- (9) In this section “Crown land” means land an interest in which belongs to Her Majesty in right of the Crown, to an office-holder in the Scottish Administration or to a government department, or which is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.
- (10) In this section “the appropriate authority”, in relation to any land—
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
  - (c) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
- (11) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

#### **Commencement Information**

**I56** S. 55 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

#### **56 Ancillary provision**

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

#### **57 Minor and consequential amendments and repeals**

Schedule 7 sets out minor amendments and amendments and repeals consequential upon the provisions of this Act.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

### Commencement Information

I57 S. 57 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

## 58 Interpretation

### (1) In this Act—

- “the 1981 Act” means the Wildlife and Countryside Act 1981 (c. 69),
- “Advisory Committee” has the meaning given in section 21(1),
- “amending order” has the meaning given in section 24(1),
- “biodiversity” has the same meaning as has “biological diversity” in the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or in any United Nations Convention replacing that Convention),
- “excluded operation” has the meaning given in section 31(2),
- “interest”, in relation to land, means any right in or over land exercisable by virtue of the ownership of an interest in land, by virtue of a licence or agreement or by virtue of any other entitlement to occupy the land, and in particular includes sporting rights,
- “interested parties” is to be construed in accordance with section 48(2),
- “land management order” has the meaning given in section 29(2),
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
- “management agreement” means an agreement under—
  - (a) section 16 (agreements for establishment of nature reserves) of the National Parks and Access to the Countryside Act 1949 (c. 97),
  - (b) section 49A (agreements to secure the conservation and enhancement, or to foster the understanding and enjoyment, of natural heritage) of the Countryside (Scotland) Act 1967 (c. 86), or
  - (c) section 15 (agreements for the purpose of conserving the natural features of areas of special scientific interest) of the Countryside Act 1968 (c. 41),
- “natural feature” has the meaning given in section 3(2),
- “nature conservation order” means an order under section 23(1),
- “operations” includes works and other activities,
- “operation requiring consent” has the meaning given in section 3(7),
- “permission” includes authorisation, consent and any other type of permission (and “permit”, “permitted” and “permitting” are to be construed accordingly),
- “prohibited operation” has the meaning given in section 23(5),
- “protected natural feature” means a natural feature—
  - (a) which is specified in an SSSI notification, or
  - (b) by reason of which a nature conservation order has effect,
- “public body or office-holder” includes a statutory undertaker and any person exercising functions of a public nature, but does not include any court or any tribunal or body exercising the judicial power of the State,
- “relevant regulatory authority” has the meaning given in section 15(2),
- “revoking order” has the meaning given in section 24(1),
- “site management statement” has the meaning given in section 4(2),



*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- “site of special scientific interest” has the meaning given in section 3(6),  
“SNH” means Scottish Natural Heritage,  
“SSSI notification” has the meaning given in section 3(5),  
“statutory undertaker” means—
- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of water or hydraulic power,
  - (b) the operator of a telecommunications code system (within the meaning of the Telecommunications Act 1984 (c. 12)),
  - (c) an airport operator (within the meaning of the Airports Act 1986 (c. 31)) operating an airport to which Part V of that Act applies,
  - (d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c. 44),
  - (e) a holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29),
  - (f) Scottish Water,
  - (g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act 2000 (c. 38) (to the extent that the person holding the licence is carrying out activities authorised by it), or
  - (h) a universal postal service provider within the meaning of the Postal Services Act 2000 (c. 26).
- (2) A reference in this Act to damaging a protected natural feature includes a reference to causing that natural feature to deteriorate.
- (3) A protected natural feature consisting of fauna is, for the purposes of this Act, to be treated as being damaged if it is disturbed or harassed to the extent that SNH or, if the land is not a site of special scientific interest, the Scottish Ministers—
- (a) no longer consider the land to which it relates to be of special interest by reason of that feature, or
  - (b) consider the degree to which the land is of special interest by reason of that feature to have decreased significantly.

#### **Commencement Information**

**I58** S. 58 in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

## **59 Short title and commencement**

- (1) This Act may be cited as the Nature Conservation (Scotland) Act 2004.
- (2) This Act (except sections 53 and 56 and this section) comes into force on such day as the Scottish Ministers may by order appoint.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 10)*

### NOTIFICATIONS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST: PROCEDURE

1 This schedule applies to notifications given under sections 3(1), 5(1) and 9(1).

#### Commencement Information

**I59** Sch. 1 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

2 SNH must give notice describing the general effect of a notification to which this schedule applies—

- (a) in at least one local newspaper circulating in the area in which the land to which the notification relates is situated, and
- (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.

#### Commencement Information

**I60** Sch. 1 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

3 A notification to which this schedule applies and the related notice under paragraph 2 must—

- (a) name a place where a copy of the notification and each document and map which, by virtue of section 3(4) or 9(4), accompanies it may be inspected free of charge at all reasonable hours,
- (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of the notification or any such document or map, and
- (c) specify the period (not being less than 3 months from the date on which the notification is given) during which, and the manner in which, representations with respect to the notification may be made.

#### Commencement Information

**I61** Sch. 1 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

#### *Confirmation or withdrawal of notification*

4 SNH must, within—

- (a) the period of one year beginning with the date on which a notification to which this schedule applies was given, or
- (b) if that period is extended under paragraph 12, the period as so extended, after considering any representations made within the period specified in the notification, decide to confirm or withdraw the notification.

#### Commencement Information

**I62** Sch. 1 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- 5 If SNH does not give notice under paragraph 10 within the period mentioned in paragraph 4(a) or that period as extended, it is to be treated as having withdrawn the notification and as having given notice of that fact on the day on which the period expired.

**Commencement Information**

**I63** Sch. 1 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Modification of notification*

- 6 SNH may confirm a notification to which this schedule applies with or without modifications; and the notice under paragraph 10 must specify the modifications (if any) which it has made.

**Commencement Information**

**I64** Sch. 1 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 7 Such modifications must not have the effect of—  
(a) adding to the operations requiring consent specified in an SSSI notification, or  
(b) extending the area of a site of special scientific interest.

**Commencement Information**

**I65** Sch. 1 para. 7 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 8 Paragraph 7(a) does not prevent SNH from amending an SSSI notification by notification under section 7(3) before it gives notice under paragraph 10 in relation to the SSSI notification.

**Commencement Information**

**I66** Sch. 1 para. 8 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 9 Where—  
(a) SNH has received a representation made within the period specified in the notification by virtue of paragraph 3(c), and  
(b) it is required by subsection (8) of section 21 to refer the matter to the Advisory Committee,  
SNH must not confirm the notification unless it has complied with paragraphs (a) and (b) of that subsection.

**Commencement Information**

**I67** Sch. 1 para. 9 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

*Notice of decision to confirm or withdraw*

- 10 SNH must, as soon as practicable after making a decision under paragraph 4 give notice of it—
- (a) to the interested parties, and
  - (b) in accordance with paragraph 2(a) and (b).

**Commencement Information**

**I68** Sch. 1 para. 10 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 11 Where a notice is given under paragraph 10(a) to a person who has made a representation in a case where the matter was referred to the Advisory Committee in pursuance of section 21(8), the notice must be accompanied by a copy of any advice given by the Advisory Committee in that regard.

**Commencement Information**

**I69** Sch. 1 para. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Extension of period during which notification is to be confirmed or withdrawn*

- 12 SNH may extend or further extend the period mentioned in paragraph 4(a) by such period—
- (a) in a case where a matter has been referred to the Advisory Committee, as it thinks fit,
  - (b) in any other case, as may be agreed with every owner and occupier of land within the site of special scientific interest.

**Commencement Information**

**I70** Sch. 1 para. 12 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 13 The period mentioned in paragraph 4(a) may not be extended under paragraph 12(a) beyond the date which is 18 months after the date on which a notification to which this schedule applies was given.

**Commencement Information**

**I71** Sch. 1 para. 13 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 14 Agreement is obtained for the purposes of paragraph 12(b) if SNH, not less than 28 days before the expiry of the period to be extended or further extended, gives notice of the proposed extension or further extension to every owner and occupier of land within the site of special scientific interest and—
- (a) every such person consents to the extension, or
  - (b) no reasonable objection by any such person to the extension is received by SNH within 28 days of the date on which the notice was given.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I72** Sch. 1 para. 14 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 15 Where SNH extends or further extends the period mentioned in paragraph 4(a) it must give notice of the extension, or further extension, to the interested parties.

**Commencement Information**

**I73** Sch. 1 para. 15 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

SCHEDULE 2  
(introduced by section 25)

NATURE CONSERVATION ORDERS AND RELATED ORDERS: PROCEDURE

**Modifications etc. (not altering text)**

**C11** Sch. 2 applied (with modifications) by SI 1994/2716 reg. 19 (as substituted (29.11.2004) by Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), 9 (with regs. 20-21))

- 1 This schedule applies to nature conservation orders, amending orders and revoking orders.

**Commencement Information**

**I74** Sch. 2 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 2 Before making an order to which this schedule applies the Scottish Ministers must—
- (a) consult SNH on the proposed order, and
  - (b) have regard to any representations made by SNH.

**Commencement Information**

**I75** Sch. 2 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Notification*

- 3 The Scottish Ministers must, as soon as practicable after making an order to which this schedule applies, give notice of it—
- (a) to the interested parties,
  - (b) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
  - (c) in such other manner (including on the internet or by other electronic means) as they think fit.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I76** Sch. 2 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 4 The notice must—
- (a) set out the order or describe its general effect and, in either case, state whether it has taken effect,
  - (b) where the notice does not set out the order—
    - (i) name a place where a copy of it may be inspected free of charge at all reasonable hours, and
    - (ii) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by the Scottish Ministers, a copy of it, and
  - (c) where the notice is given in respect of a nature conservation order or an amending order, specify the period (not being less than 3 months from the date on which the notice is given) during which, and the manner in which, representations with respect to the order may be made.

**Commencement Information**

**I77** Sch. 2 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Confirmation of nature conservation orders and amending orders*

- 5 The Scottish Ministers must, within—
- (a) the period of one year beginning with the date on which a nature conservation order or amending order is made, or
  - (b) if that period is extended under paragraph 12, the period as so extended,
- after considering any representations made within the period specified in the notice and the report of any person appointed under paragraph 10 to hold an inquiry or to hear representations, decide either to confirm or not to confirm the order.

**Commencement Information**

**I78** Sch. 2 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 6 The Scottish Ministers may confirm the order with or without modifications; and the notice given under paragraph 8 of the decision to confirm must specify the modifications (if any) which they have made.

**Commencement Information**

**I79** Sch. 2 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 7 Such modifications must not extend the area of land to which a nature conservation order relates.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I80** Sch. 2 para. 7 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 8 The Scottish Ministers must, as soon as practicable after making a decision under paragraph 5, give notice of it in accordance with paragraph 3(a) to (c).

**Commencement Information**

**I81** Sch. 2 para. 8 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 9 An order which is confirmed with modifications has effect, from the giving of notice under paragraph 8 of the decision to confirm, in its modified form.

**Commencement Information**

**I82** Sch. 2 para. 9 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Inquiry or other opportunity to be heard*

- 10 If any representation made during the period specified in the notice is not withdrawn during the period mentioned in paragraph 5(a), or that period as extended, the Scottish Ministers must—
- (a) cause a local inquiry to be held, or
  - (b) give the person who made the representation an opportunity of being heard by a person appointed by the Scottish Ministers for the purpose.

**Commencement Information**

**I83** Sch. 2 para. 10 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 11 Subsections (4) to (8) (which relate to the giving of evidence at, and defraying the cost of, local inquiries) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply in relation to any inquiry held under paragraph 10(a) as they apply in relation to a local inquiry which is caused to be held under subsection (1) of that section.

**Commencement Information**

**I84** Sch. 2 para. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Extension of period*

- 12 The Scottish Ministers may, with the agreement (obtained in accordance with paragraph 13) of every owner and occupier of land to which the order relates, extend or further extend the period mentioned in paragraph 5(a) by such period as may be agreed with those persons.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I85** [Sch. 2 para. 12](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

- 13 Agreement is obtained for the purposes of paragraph 12 if the Scottish Ministers, not less than 28 days before the expiry of the period to be extended or further extended, give notice of the proposed extension or further extension to every owner and occupier of land to which the order relates and—
- (a) every such person consents to the extension, or
  - (b) no reasonable objection by any such person to the extension is received by the Scottish Ministers within 28 days of the date on which the notice was given.

**Commencement Information**

**I86** [Sch. 2 para. 13](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

- 14 Where the Scottish Ministers extend or further extend the period mentioned in paragraph 5(a) they must give notice of the extension, or further extension, to the interested parties.

**Commencement Information**

**I87** [Sch. 2 para. 14](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

- 15 An order to which this schedule applies and a notice under paragraph 8 must be recorded in the General Register of Sasines or registered in the Land Register of Scotland as appropriate.

**Commencement Information**

**I88** [Sch. 2 para. 15](#) in force at 29.11.2004 by [S.S.I. 2004/495](#), [art. 2](#)

**SCHEDULE 3**  
*(introduced by section 33)*

**LAND MANAGEMENT ORDERS AND RELATED ORDERS: PROCEDURE**

**Modifications etc. (not altering text)**

**C12** [Sch. 3](#) applied (with modifications) by SI 1994/2716 reg. 19 (as substituted (29.11.2004) by [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), [9](#) (with regs. 20-21))

*Notification of proposals for land management order*

- 1 SNH must—



*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

- (a) give a copy of a proposal under section 29(2) for a land management order and the map accompanying it to every owner and occupier of land to which the proposal relates,
- (b) give notice explaining the general effect of the proposed land management order to each of the other interested parties, and
- (c) provide the Scottish Ministers with—
  - (i) the name and address of each of the interested parties, and
  - (ii) such other information as SNH thinks fit in relation to the proposal.

**Commencement Information**

**189** Sch. 3 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 2 SNH must also arrange for notification of the proposal to be published—
  - (a) in at least one local newspaper circulating in the area in which the land to which the proposal relates is situated, and
  - (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.

**Commencement Information**

**190** Sch. 3 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 3 A notification under paragraph 1 or 2 must—
  - (a) name a place where a copy of the proposal and the map which accompanies it may be inspected free of charge at all reasonable hours,
  - (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of the proposal or map,
  - (c) specify the manner in which representations with respect to the proposal may be made to the Scottish Ministers.

**Commencement Information**

**191** Sch. 3 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 4 Such representations may be made at any time—
  - (a) during the period of three months beginning on the date on which the notice under paragraph 1(b) is given, or
  - (b) if that period is extended under paragraph 5, during that period as extended.

**Commencement Information**

**192** Sch. 3 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 5 The Scottish Ministers may, on the application of any person or of their own accord, extend the period mentioned in paragraph 4(a) by such further period of up to 3 months as they think fit by giving notice of the extension, at any time before the expiry of the period so mentioned, to the persons to whom a copy proposal or a notice was given under paragraph 1(a) or (b).

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I93** Sch. 3 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Power to require disclosure of information*

- 6 The Scottish Ministers may give notice to—
- (a) SNH, or
  - (b) any person to whom SNH has given a copy proposal or a notice under paragraph 1(a) or (b),
- requiring SNH or the person to provide the Scottish Ministers, at a time and place and in the form and manner specified in the notice, with such document or other information relating to the proposal as may be specified in the notice.

**Commencement Information**

**I94** Sch. 3 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 7 Paragraph 6 does not authorise the Scottish Ministers to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

**Commencement Information**

**I95** Sch. 3 para. 7 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 8 Any person who—
- (a) refuses or fails, without reasonable excuse, to do anything required of the person by a notice given under paragraph 6, or
  - (b) intentionally alters, suppresses or destroys a document containing any information which that person has been required by such a notice to produce,
- is guilty of an offence.

**Commencement Information**

**I96** Sch. 3 para. 8 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 9 Any person guilty of an offence under paragraph 8 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Commencement Information**

**I97** Sch. 3 para. 9 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 10 SNH may, at any time before the Scottish Ministers decide whether to make a land management order on a proposal under section 29(2), withdraw the proposal by giving notice to each person to whom it gave a copy proposal or a notice under paragraph 1(a) or (b).

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I98** Sch. 3 para. 10 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Notification of decision on orders*

- 11 The Scottish Ministers must publish a decision under section 30(1) or 32(3)—
- (a) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
  - (b) in such other manner (including on the internet or by other electronic means) as they think fit.

**Commencement Information**

**I99** Sch. 3 para. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 12 The Scottish Ministers must also give notice of their decision to the interested parties.

**Commencement Information**

**I100** Sch. 3 para. 12 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 13 Such a notice must specify—
- (a) the Scottish Ministers' reasons for making their decision,
  - (b) if they have decided to make a land management order other than in the manner proposed by SNH, the manner in which the order made differs from the order proposed,
  - (c) if they have decided to amend the order, the amendments to be made to the land management order, and
  - (d) the circumstances in which an appeal may be made under section 34(1) against their decision.

**Commencement Information**

**I101** Sch. 3 para. 13 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 14 A land management order, and any order under section 32(3) amending or revoking a land management order, must be recorded in the General Register of Sasines or registered in the Land Register of Scotland as appropriate.

**Commencement Information**

**I102** Sch. 3 para. 14 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 4

*(introduced by section 44)*

### POWERS OF ENTRY OF AUTHORISED PERSONS: FURTHER PROVISION

- 1 (1) A person authorised under section 44 to enter any land may not demand admission as of right to any land which is occupied unless—
- (a) the entry is for the purpose mentioned in subsection (1)(f) of that section,
  - (b) the entry is for the purpose mentioned in subsection (1)(h) or (k) of that section and at least 14 days' notice of the intended entry has been given, or
  - (c) the entry is for any other purpose mentioned in subsection (1) or (2) of that section and at least 24 hours' notice of the intended entry has been given.
- (2) Any such notice must be given to the occupier and, where practicable, to the owner of the land.

#### Commencement Information

**I103** Sch. 4 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by SNH or, as the case may be, the Scottish Ministers to enter any land (other than a dwelling or lockfast premises) for any of the purposes mentioned in section 44(1) and (2) and that—
- (a) admission to the land has been refused,
  - (b) such refusal is reasonably apprehended,
  - (c) the land is unoccupied,
  - (d) the occupier is temporarily absent from the land, or
  - (e) an application for admission to the land would defeat the object of the proposed entry,
- the sheriff or justice may grant a warrant authorising the person to enter the land, if necessary using reasonable force.
- (2) A sheriff or justice must not grant a warrant under sub-paragraph (1) by virtue only of being satisfied that a condition specified in sub-paragraph (1)(a) or (b) is fulfilled unless the sheriff or justice is satisfied that—
- (a) notice of the intended entry has been given in accordance with sub-paragraph (1)(b) or (c) of paragraph 1, or
  - (b) such notice is not, by virtue of sub-paragraph (1)(a) of that paragraph, required.
- (3) A warrant under this schedule continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

#### Commencement Information

**I104** Sch. 4 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 3 A person authorised under section 44 or by a warrant granted under this schedule to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the person's authority.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I105** Sch. 4 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 4 (1) A person who enters any land in the exercise of any power conferred by section 44—
- (a) may—
    - (i) be accompanied by any other persons, and
    - (ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the person in the exercise of that power,
  - (b) take samples of any articles or substances found there and remove the samples from the land.
- (2) A power specified in sub-paragraph (1)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

**Commencement Information**

**I106** Sch. 4 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 5 A person leaving any land which has been entered in exercise of a power conferred by section 44, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the person found it.

**Commencement Information**

**I107** Sch. 4 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 6 (1) SNH or, as the case may be, the Scottish Ministers must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by SNH or, as the case may be, the Scottish Ministers of any powers conferred on the person by section 44, or
  - (b) the failure of a person so authorised to perform the duty imposed by paragraph 5,
- unless the damage is attributable to the fault of the person who sustained it.
- (2) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of such compensation, is to be determined by arbitration.

**Commencement Information**

**I108** Sch. 4 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 5

*(introduced by section 49)*

### PART 2: TRANSITIONAL ARRANGEMENTS

- 1 In this schedule “the relevant day” means the day on which paragraph 4 of schedule 7 comes into force.

**Commencement Information**

**I109** Sch. 5 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Notifications under the 1981 Act*

- 2 Paragraph 3 applies in relation to each notification given under section 28(1) of the 1981 Act (an “existing notification”) which—
- (a) has effect immediately before the relevant day, and
  - (b) where the notification was—
    - (i) given after the coming into force of the Wildlife and Countryside (Amendment) Act 1985 (c. 31), and
    - (ii) not preceded by a notice given under section 28(2) of the 1981 Act (as originally enacted) during the 6 months immediately preceding the coming into force of that Act of 1985,
- has been confirmed by notice under section 28(4A)(b) of the 1981 Act.

**Commencement Information**

**I110** Sch. 5 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 3 Where this paragraph applies in relation to an existing notification—
- (a) the notification is to be treated as an SSSI notification given, and confirmed by SNH under paragraph 4 of schedule 1 to this Act, on the day on which this paragraph first applies in relation to the notification,
  - (b) any operation specified in the notification in pursuance of section 28(4)(b) of the 1981 Act is to be treated, in relation to it, as an operation requiring consent,
  - (c) any written notice given in relation to the notification for the purposes of section 28(5)(a) of the 1981 Act during the period of 4 months immediately prior to the day on which this paragraph first applies in relation to the notification is, unless SNH has given written intimation to the person who gave the notice of its refusal to consent to the operation specified in it, to be treated as an application under section 16(2) of this Act, and
  - (d) SNH is to be treated as having given its written consent on an application under section 16(2) of this Act to the carrying out of an operation which is, by virtue of sub-paragraph (b), to be treated as an operation requiring consent if SNH has, on or before the day on which this paragraph first applies in relation to the notification, given its written consent to the carrying out of the operation.

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

**Commencement Information**

**I111** Sch. 5 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 4 SNH must, as soon as practicable after paragraph 3 first applies in relation to an existing notification—
- (a) prepare a site management statement in respect of the land to which the notification relates, or
  - (b) adopt an existing statement which provides guidance of the type described in section 4(2)(a) in relation to the notification as the site management statement in respect of that land.

**Modifications etc. (not altering text)**

**C13** Sch. 5 para. 4 applied (29.11.2004) by Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **20(5)** (with regs. 20-21)

**Commencement Information**

**I112** Sch. 5 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 5 SNH may, despite subsection (2) of section 6, carry out at such time as it thinks fit the first review under subsection (1)(b) of that section of an operation which is, by virtue of paragraph 3(b), to be treated as an operation requiring consent.

**Commencement Information**

**I113** Sch. 5 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 6 A permission to carry out an operation specified in an existing notification given before paragraph 3 first applies to the notification is not to be treated as having been given in accordance with section 15.

**Commencement Information**

**I114** Sch. 5 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 7 Where paragraph 3 does not, by virtue of paragraph 2(b), apply in relation to an existing notification—
- (a) sections 28 and 51 of the 1981 Act, and
  - (b) section 12 of the Natural Heritage (Scotland) Act 1991 (c. 28),
- continue, despite the repeal of those provisions by paragraphs 4 and 8 of schedule 7, to have effect in relation to the existing notification until it is confirmed by notice under section 28(4A)(b) of the 1981 Act or ceases to have effect.

**Commencement Information**

**I115** Sch. 5 para. 7 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

### Notifications under the 1949 Act

- 8 Paragraph 3 does not apply in relation to any notification given under section 23 of the National Parks and Access to the Countryside Act 1949 (c. 97) (a “1949 Act notification”).

#### Commencement Information

**I116** Sch. 5 para. 8 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 9 Land in respect of which a 1949 Act notification has been given is, where that notification—
- (a) has, by virtue of section 28(13) of the 1981 Act, effect as if given under section 28(1)(a) of the 1981 Act, and
  - (b) has effect immediately before the relevant day,
- to be treated as a site of special scientific interest for the purposes of section 12 of this Act.

#### Commencement Information

**I117** Sch. 5 para. 9 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 10 SNH may revoke a 1949 Act notification by giving notice of that fact to the interested parties.

#### Commencement Information

**I118** Sch. 5 para. 10 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 11 (1) Each order made under section 29 of the 1981 Act—
- (a) which was made before the relevant day, and
  - (b) in respect of which notice has been given under paragraph 6 of Schedule 11 to the 1981 Act of a decision to confirm it,
- is to be treated as a nature conservation order made, and confirmed under paragraph 5 of schedule 2, on that day.
- (2) Section 29 of, and Schedule 11 to, the 1981 Act continue, despite the repeal of those provisions by paragraph 4 of schedule 7, to have effect in relation to an order under section 29 of the 1981 Act which is not, by virtue of sub-paragraph (1)(b), to be treated as a nature conservation order until notice is given under paragraph 6 of Schedule 11 to the 1981 Act in respect of it.
- (3) An order made under section 29 of the 1981 which is not, by virtue of sub-paragraph (1)(b), to be treated as a nature conservation order may, despite the provisions of Schedule 11 to the 1981 Act, be revoked with immediate effect by order made by the Scottish Ministers.

#### Modifications etc. (not altering text)

**C14** Sch. 5 para. 11(3) applied (29.11.2004) by Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **21(2)** (with regs. 20-21)



*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

#### Commencement Information

**I119** Sch. 5 para. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

#### *Registers of notifications: transitory provisions*

- 12 (1) This paragraph has effect until the day on which section 22(1) comes into force.
- (2) SNH must compile and maintain, in respect of each planning authority, a register containing—
- (a) copies of each SSSI notification which relates wholly or partly to land situated within the district of the authority,
  - (b) copies of all—
    - (i) notifications given under section 5(1), 6(5), 7(3), 8(1) or 9(1),
    - (ii) notices given under paragraph 10 or 15 of schedule 1,in relation to the SSSI notification, and
  - (c) such other information as SNH considers appropriate in relation to the SSSI notification.
- (3) Each planning authority must keep a copy of the register relating to its district available at its principal office for public inspection free of charge, and may similarly keep, at such of its other offices as it thinks fit, a copy of such part of the register as appears to it to relate to the area in which the office is situated.
- (4) A register maintained under sub-paragraph (2) and a copy of all or part of a register kept under sub-paragraph (3) may be in electronic form.

#### Commencement Information

**I120** Sch. 5 para. 12 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 13 Any notification, plan or notice which, immediately before the relevant day, was included in—
- (a) a register of notifications in respect of a planning authority maintained under subsection (12) of section 28 of the 1981 Act, or
  - (b) a copy of that register, or of part of it, kept under subsection (12B) of that section,
- is to be treated as included in the corresponding register maintained under sub-paragraph (2) of paragraph 12 or, as the case may be, the corresponding copy register or part kept under sub-paragraph (3) of that paragraph.

#### Commencement Information

**I121** Sch. 5 para. 13 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 6

(introduced by section 50)

### PROTECTION OF WILDLIFE

1 The 1981 Act is amended as follows.

#### Commencement Information

**I122** Sch. 6 para. 1 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

#### *Protection of birds: offences*

2 (1) Section 1 (protection of wild birds etc.) is amended as follows.

(2) In subsection (1)—

- (a) after “intentionally” insert “ or recklessly ”,
- (b) in paragraph (b), for “or destroys” substitute “ , destroys or otherwise interferes with ”,
- (c) after paragraph (b) insert—
  - “(ba) at any other time takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;
  - (bb) obstructs or prevents any wild bird from using its nest;”.

(3) In subsection (3)—

- (a) in paragraph (a), after “taken”, where second occurring, insert “ at or from a place in Scotland ”,
- (b) the word “or” at the end of that paragraph is repealed,
- (c) in paragraph (b), after “sold” insert “ at a place in Scotland ”,
- (d) after that paragraph insert “; or
  - (c) that the bird, egg or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—
    - (i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or
    - (ii) that the bird, egg or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.”,
- (e) the words from “and”, where first occurring, to the end of the subsection are repealed.

(4) After that subsection insert—

“(3A) In subsection (3)—

“the relevant provisions” means such of the provisions of—

- (a) the Protection of Birds Acts 1954 to 1967 and orders made under those Acts, and
- (b) this Part and orders made under it,

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

as were in force at the time when the bird or egg was killed or taken or, as the case may be, the bird, egg or other thing was sold,

“the relevant regulations” means—

- (a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and
- (b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,

as amended from time to time (or any Community instrument replacing either of them).”

(5) In subsection (5), after “intentionally” insert “ or recklessly ”.

(6) After that subsection insert—

“(5A) Subject to the provisions of this Part, any person who intentionally or recklessly disturbs any wild bird included in Schedule 1 which leks while it is doing so shall be guilty of an offence.

(5B) Subject to the provisions of this Part, any person who intentionally or recklessly harasses any wild bird included in Schedule 1A shall be guilty of an offence.

(5C) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”

#### Commencement Information

**I123** Sch. 6 para. 2 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 3 In section 2 (exceptions to offences against wild birds etc.)—
- (a) subsection (2) is repealed,
  - (b) in subsection (3), for “Subsections (1) and (2)” substitute “ Subsection (1) ”.

#### Commencement Information

**I124** Sch. 6 para. 3 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 4 In section 3 (areas in which wild birds are given special protection)—
- (a) in subsection (1)(a), after “intentionally” insert “ or recklessly ”,
  - (b) subsection (2) is repealed.

#### Commencement Information

**I125** Sch. 6 para. 4 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 5 (1) Section 4 (exceptions to offences against wild birds etc.) is amended as follows.
- (2) In subsection (2), in paragraph (c), for the words from “if” to the end substitute “ (an unlawful act if he shows that each of the conditions specified in subsection (2A) was satisfied in relation to the carrying out of the unlawful act. ”

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

(3) After that subsection insert—

“(2A) Those conditions are—

- (a) that the unlawful act was the incidental result of a lawful operation or other activity;
- (b) that the person who carried out the lawful operation or other activity—
  - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
  - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
- (c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild bird, nest or, as the case may be, egg in relation to which the unlawful act was carried out.”

(4) In subsection (4), for “(3)(c)” substitute “ (3) ”.

(5) In subsection (5)—

- (a) for “(3)(c)” substitute “ (3) ”,
- (b) for “paragraph” substitute “ subsection ”.

(6) In subsection (6), for “(3)(c)” substitute “ (3) ”.

#### Commencement Information

**I126** Sch. 6 para. 5 in force at 1.10.2004 by S.I. 2004/407, art. 2(b)

- 6 In section 5 (prohibition of certain methods of killing or taking wild birds)—
- (a) in subsection (1)(a), for “calculated” substitute “ likely ”,
  - (b) paragraphs (a) and (b) of subsection (5) are repealed.

#### Commencement Information

**I127** Sch. 6 para. 6 in force at 1.10.2004 by S.I. 2004/407, art. 2(b)

- 7 In section 7(3) (prohibition on possessing certain birds)—
- (a) the word “or” at the end of paragraph (a) is repealed,
  - (b) after paragraph (b) insert “; or
  - (c) any offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) relating to birds (other than an offence under Regulation 9 of those Regulations)”.

#### Commencement Information

**I128** Sch. 6 para. 7 in force at 1.10.2004 by S.I. 2004/407, art. 2(b)

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*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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*Protection of animals: offences*

- 8 (1) Section 9 (protection of certain wild animals) is amended as follows.
- (2) In subsection (1), after “intentionally” insert “ or recklessly ”.
- (3) In subsection (3)—
- (a) in paragraph (a), after “taken”, where second occurring, insert “ at or from a place in Scotland ”,
  - (b) the word “or” at the end of that paragraph is repealed,
  - (c) in paragraph (b), after “sold” insert “ at a place in Scotland ”,
  - (d) after paragraph (b) insert “; or
  - (c) that the animal or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—
    - (i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or
    - (ii) that the animal or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.”,
  - (e) the words from “and”, where first occurring, to the end of the subsection are repealed.
- (4) After that subsection insert—
- “(3A) In subsection (3)—
- “the relevant provisions” means such of the provisions of the Conservation of Wild Creatures and Wild Plants Act 1975 (c. 48) and this Part as were in force at the time when the animal was killed or taken or, as the case may be, the animal or other thing was sold, and
- “the relevant regulations” means—
- (a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and
  - (b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,
- as amended from time to time (or any Community instrument replacing either of them).”
- (5) In subsection (4), after “intentionally” insert “ or recklessly ”.
- (6) After that subsection insert—
- “(4A) Subject to the provisions of this Part, any person who, intentionally or recklessly, disturbs or harasses any wild animal included in Schedule 5 as a—
- (a) dolphin, whale or porpoise (cetacea); or
  - (b) basking shark (cetorhinus maximus),
- shall be guilty of an offence.”
- (7) After subsection (5) insert—

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsection (5)(b)) shall be guilty of an offence.”

(8) In subsection (6), after “(5)(a)” insert “ or for an offence under subsection (5A) relating to an act which is mentioned in subsection (1), (2) or (5)(a) ”.

#### **Commencement Information**

**I129** Sch. 6 para. 8 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 9 In section 10 (exceptions to offences against wild animals)—
- (a) in subsection (3), in paragraph (c), for the words from “if” to the end substitute “(“an unlawful act”) if he shows—
- (i) that each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act, or
  - (ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”,
- (b) after that subsection insert—
- “(3A) Those conditions are—
- (a) that the unlawful act was the incidental result of a lawful operation or other activity;
  - (b) that the person who carried out the lawful operation or other activity—
    - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
    - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
  - (c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.”,
- (c) after subsection (6) insert—
- “(6A) An authorised person shall not be entitled to rely on the defence provided by subsection (4) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action.”

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

### Commencement Information

**I130** Sch. 6 para. 9 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 10 (1) Section 11 (prohibition of certain methods of killing or taking wild animals) is amended as follows.
- (2) In subsection (1)(a)—
- (a) after “position” insert “ or otherwise uses ”,
  - (b) for the words from “which” to the end of the paragraph substitute “ or a snare of any other type specified in an order made by the Scottish Ministers ”.
- (3) After that paragraph insert—
- “(aa) sets in position or otherwise uses any other type of snare which is either of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it;”.
- (4) In subsection (1)(b), for the words from “wild” to “aforesaid,” substitute “ animal ”.
- (5) In subsection (2)(a), for “calculated” substitute “ likely ”.
- (6) For subsection (3) substitute—
- “(3) Any person who sets a snare in position or who knowingly causes or permits a snare to be so set must, while it remains in position, inspect it or cause it to be inspected at least once every day at intervals of no more than 24 hours.
- (3A) Any person who, while carrying out such an inspection, finds an animal caught by the snare being inspected must, during the course of the inspection, release or remove the animal (whether live or dead).
- (3B) Subject to the provisions of this Part, any person who—
- (a) without reasonable excuse, contravenes subsection (3), or
  - (b) contravenes subsection (3A),
- shall be guilty of an offence.
- (3C) Subject to the provisions of this Part, any person who—
- (a) is, without reasonable excuse, in possession of; or
  - (b) sells, or offers or exposes for sale,
- a snare which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a) shall be guilty of an offence.
- (3D) Subject to the provisions of this Part, any person who, without reasonable excuse—
- (a) while on any land, has in his possession any snare without the authorisation of the owner or occupier of the land; or
  - (b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,
- shall be guilty of an offence.
- (3E) Subject to the provisions of this Part, any person who uses a snare otherwise than in accordance with such requirements as may be specified in an order

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made by the Scottish Ministers, or who knowingly causes or permits any other person to do so, shall be guilty of an offence.”

(7) After subsection (4) insert—

“(4A) The Scottish Ministers may by order specify—

- (a) criteria which articles of a type referred to in subsections (1) to (3E) must meet to be treated as articles of that type for the purposes of those subsections,
- (b) circumstances in which articles of that type are to be treated as having been set or used in a manner which constitutes an offence under those subsections.”

(8) In subsection (5), for “(1)(b) or (c)” substitute “ (1)(c) ”.

#### Commencement Information

**I131** Sch. 6 para. 10 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

11 (1) Section 13 (protection of wild plants) is amended as follows.

(2) In subsection (1)(a)—

- (a) after “intentionally” insert “ or recklessly ”,
- (b) after “destroys” insert “—  
(i)”,
- (c) at the end insert—  
“(ii) any seed or spore attached to any such wild plant;  
or”.

(3) In subsection (1)(b), after “intentionally” insert “ or recklessly ”.

(4) In subsection (3), for the words from “if” to the end substitute “(“an unlawful act”) if he shows—

- (a) that the unlawful act was the incidental result of a lawful operation or other activity;
- (b) that the person who carried out the lawful operation or other activity—
  - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
  - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
- (c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent, such steps as were reasonably practicable in the circumstances to minimise the damage to the wild plant in relation to which the unlawful act was carried out.”

(5) After that subsection insert—

“(3A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”



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- (6) In subsection (4), after “(2)(a)” insert “ or for an offence under subsection (3A) relating to an act which is mentioned in subsection (2)(a) ”.

**Commencement Information**

**I132** Sch. 6 para. 11 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

*Non-native species*

- 12 In section 14 (prohibition on introducing new species)—
- (a) in subsection (1)(b), for the words from “included” to “9” substitute “ a hybrid of any animal of that kind ”,
  - (b) after subsection (1) insert—
    - “(1A) Subject to the provisions of this Part, if any person releases or allows to escape from captivity any animal which is—
      - (a) included in Part I of Schedule 9; or
      - (b) a hybrid of any animal included in that Part,    - he shall be guilty of an offence.”,
  - (c) in subsection (2)—
    - (i) after “is” insert —
      - “(a)”,
    - (ii) after “9” insert “; or
      - (b) a hybrid of any plant included in that Part”.

**Commencement Information**

**I133** Sch. 6 para. 12 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 13 After section 14 insert—

**“14A Prohibition on sale etc. of certain animals or plants**

- (1) This section applies to—
- (a) any animal of a type mentioned in subsection (1) or (1A) of section 14 specified in an order made by the Scottish Ministers for the purposes of this section; and
  - (b) any plant—
    - (i) which does not ordinarily grow in Great Britain in a wild state or which is a hybrid of such a plant; or
    - (ii) of a type mentioned in subsection (2) of section 14, specified in such an order.
- (2) Subject to the provisions of this Part, any person who—
- (a) sells, offers or exposes for sale or has in the person’s possession or transports for the purpose of sale any animal or plant to which this section applies; or

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- (b) publishes or causes to be published any advertisement likely to be understood as conveying that the person buys or sells, or intends to buy or sell, any such animal or plant,  
is guilty of an offence.
- (3) An order under subsection (1) may specify particular types of animals or plants—
  - (a) subject to such exceptions;
  - (b) only at such times of the year;
  - (c) only in relation to such areas,  
as the order may specify.

#### **14B Guidance: non-native species**

- (1) The Scottish Ministers may issue guidance (or approve guidance issued by others) for the purpose of providing persons with recommendations, advice and information regarding—
  - (a) any animal of a type mentioned in subsection (1) or (1A) of section 14,
  - (b) any plant of a type mentioned in subsection (2) of that section or specified in an order under section 14A(1)(b)(i),
 and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).
- (2) A person who fails to comply with any guidance issued or approved under subsection (1) is not by reason only of that failure liable in any criminal or civil proceedings.
- (3) But any such guidance is admissible in evidence in such proceedings and a court may take account of any failure to comply with it in determining any questions in the proceedings.”

#### **Commencement Information**

**I134** Sch. 6 para. 13 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

#### *Miscellaneous*

14 After section 15 insert—

#### **“15A Possession of pesticides**

- (1) Any person who is in possession of any pesticide containing one or more prescribed active ingredient shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under subsection (1) if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—
  - (a) any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48), or

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(b) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations.

(3) In this section—

“pesticide” has the meaning given in the Food and Environment Protection Act 1985 (c. 48), and

“prescribed active ingredient” means an ingredient of a pesticide which fits it for use as such and which is of a type prescribed by order made by the Scottish Ministers.”

#### Commencement Information

**I135** Sch. 6 para. 14 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

15 In section 16 (power to grant licences)—

(a) in subsection (2)(b), the words from “or,” to “egg”, where second occurring, are repealed,

(b) in subsection (3)—

(i) for “and (4)” substitute “, (4) and (4A) ”,

(ii) for “and (2)” substitute “, (2) and (3C)(a) ”,

(iii) in paragraph (a), after “scientific” insert “, research ”,

(iv) in paragraph (c), after “conserving” insert “ wild birds, ”,

(v) after that paragraph insert—

“(ca) for the purpose of conserving any area of natural habitat;”,

(c) in subsection (4), for “section 14” substitute “ sections 14 and 14A ”,

(d) after subsection (4) insert—

“(4A) The appropriate authority shall not grant a licence under subsection (4) permitting anything to be done in contravention of section 6(1) or (2) unless it is satisfied that there is no other satisfactory solution.”

#### Commencement Information

**I136** Sch. 6 para. 15 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

16 In section 19 (enforcement)—

(a) in subsection (1)(b)—

(i) at beginning insert “ search for, ”,

(ii) for the words “have in his possession” substitute “ may have used, or may have or have had in his possession, ”,

(iii) after “found” insert “ in or ”,

(b) in subsection (2)—

(i) after “committing” insert “ or has committed ”,

(ii) for “dwelling-house” substitute “ dwelling or lockfast premises ”,

(c) in subsection (3)—

(i) for “information” substitute “ evidence ”,

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- (ii) for the words from “(with” to “premises” in the second place where it occurs substitute “ to enter those premises, if necessary using reasonable force, and search them ”,
- (d) after subsection (3) insert—
  - “(4) A warrant under subsection (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
  - (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.
  - (6) A constable who enters any land in the exercise of a power conferred by this section—
    - (a) may—
      - (i) be accompanied by any other persons, and
      - (ii) take any machinery, other equipment or materials on to the land,
 for the purpose of assisting the constable in the exercise of that power,
    - (b) may take samples of any articles or substances found there and remove the samples from the land.
  - (7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
  - (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

#### **Commencement Information**

**I137** Sch. 6 para. 16 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 17 After section 19ZB (inserted, as respects England and Wales, by Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37)) insert—

#### **“19ZC Wildlife inspectors: Scotland**

- (1) The Scottish Ministers may authorise any person to carry out the functions conferred by this section and section 19ZD(3), (4) and (8) (and any person so authorised is to be known as a “wildlife inspector”).
- (2) An authorisation under subsection (1)—
  - (a) shall be in writing, and
  - (b) is subject to any conditions or limitations specified in it.
- (3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence of authorisation, enter and inspect—

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- (a) any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;
  - (b) any premises where the inspector has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;
  - (c) any premises where the inspector has reasonable cause to believe that any birds are kept, for the purpose of ascertaining whether an offence under section 8(1) is being, or has been, committed on those premises;
  - (d) any premises for the purpose of ascertaining whether an offence under section 14 or 14A is being, or has been, committed on those premises;
  - (e) any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by the occupier, and which the occupier made or furnished—
    - (i) for the purposes of obtaining (whether for the occupier or another person) a relevant registration or licence; or
    - (ii) in connection with a relevant registration or licence held by the occupier.
- (4) In subsection (3)—
- (a) paragraphs (a) to (c) do not confer power to enter a dwelling except for purposes connected with—
    - (i) a relevant registration or licence held by an occupier of the dwelling; or
    - (ii) an application by an occupier of the dwelling for a relevant registration or licence,
  - (b) paragraph (d) does not confer power to enter a dwelling.
- (5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A is being, or has been, committed in respect of any specimen, require any person who has possession or control of the specimen to make it available for examination by the inspector.
- (6) Any person who has possession or control of any live bird or other animal shall give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.
- (7) Any person who—
- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5); or
  - (b) fails without reasonable excuse to give any assistance reasonably required under subsection (6),
- shall be guilty of an offence.
- (8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.

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(9) In this section—

“relevant registration or licence” means—

- (a) a registration in accordance with regulations under section 7(1);  
or
- (b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A;

“specimen” means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

### **19ZD Power to take samples: Scotland**

- (1) A constable who suspects with reasonable cause that a specimen found by the constable in the exercise of powers conferred by section 19 is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its origin, identity or ancestry.
- (2) A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.
- (3) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed, require the taking of a sample of blood or tissue from a specimen found by the inspector in the exercise of powers conferred by section 19ZC(3)(a) to (d) in order to determine its origin, identity or ancestry.
- (4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed in respect of any specimen (“the relevant specimen”), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.
- (5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.
- (6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.
- (7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the

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specimen shall give the person taking the sample such assistance as that person may reasonably require for that purpose.

(8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZC(3), may take with him a veterinary surgeon if the constable or, as the case may be, inspector has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsection (1) or (2) or, as the case may be, (3) or (4).

(9) Any person who—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),
- (b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or
- (c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),

shall be guilty of an offence.

(10) In this section—

- (a) “specimen” has the same meaning as in section 19ZC;
- (b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its origin, identity or ancestry are to determining the origin, identity or ancestry of the bird, other animal or plant.”

#### Commencement Information

**I138** Sch. 6 para. 17 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

18 In section 20(2) (summary prosecutions)—

- (a) for “two” substitute “ three ”, and
- (b) at the end insert “ or, in the case of a continuous contravention, after the last date on which the offence was committed ”.

#### Commencement Information

**I139** Sch. 6 para. 18 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

19 In section 21 (penalties etc.)—

- (a) in subsection (1), for “or section 17” substitute “ , 15A, 17, 19ZC (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d)) or 19ZD ”,
- (b) in subsection (4)—
  - (i) after “14” insert “ or 14A ”,
  - (ii) in paragraph (a), for “the statutory maximum” substitute “ £40,000 ”,
- (c) after subsection (4) insert—

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- “(4A) A person guilty of an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by subsection (3)(d) of that section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.”,
- (d) in subsection (6)(b), after “14” insert “ or 14A ”.

#### Commencement Information

**I140** Sch. 6 para. 19 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 20 In section 22 (power to vary Schedules)—
- (a) in subsection (1)—
    - (i) after “year” insert “—  
(a)”,
    - (ii) for “1” substitute “ A1 ”,
    - (iii) at the end insert—
      - “(b) add any animal to, or remove any animal from, Schedule 5 or 6 or Part I of Schedule 9;
      - (c) add any plant to, or remove any plant from, Schedule 8 or Part II of Schedule 9.”,
  - (b) after subsection (2) insert—
    - “(2A) Before making an order under subsection (1) the Scottish Ministers shall consult Scottish Natural Heritage.”,
  - (c) subsections (4) and (5) are repealed.

#### Commencement Information

**I141** Sch. 6 para. 20 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 21 In section 26 (procedure for orders)—
- (a) in each of subsections (2) and (3), for “11” substitute “ 11(4) ”,
  - (b) in subsection (4)(b), for “22(3)” substitute “ 22 ”.

#### Commencement Information

**I142** Sch. 6 para. 21 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 22 After section 26 insert—

#### “26A Enforcement of wildlife legislation

Regulations under section 2(2) of the European Communities Act 1972 (c. 68) for the purpose of implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora as amended



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by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC may, despite paragraph 1(1)(d) of Schedule 2 to that Act, create offences punishable on summary conviction with imprisonment for a term not exceeding six months.”

**Commencement Information**

**I143** Sch. 6 para. 22 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 23 (1) Section 27 (interpretation of Part I) is amended as follows.
- (2) In subsection (1)—
- (a) in the definition of “poultry”, for “domestic” substitute “ the domestic forms of the following, that is to say ”,
  - (b) in the definition of “wild bird”—
    - (i) for “kind” substitute “ species ”,
    - (ii) for “Great Britain” substitute “ any member State or the European territory of any member State ”,
  - (c) in the definition of “wild plant”, after “plant” insert “ (including fungi) ”.
- (3) After subsection (2) insert—
- “(2A) An animal shall not be treated as bred in captivity for the purposes of this Part unless its parents were lawfully held in captivity—
- (a) where the animal is of a viviparous species, when it was born,
  - (b) where the animal is of an oviparous species, when the egg was laid.”
- (4) After subsection (3) insert—
- “(3ZA) Any reference in this Part to a plant which is growing—
- (a) includes a reference to a bulb, corm or rhizome;
  - (b) does not include a reference to a seed or spore.”

**Commencement Information**

**I144** Sch. 6 para. 23 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 24 Before Schedule 1 insert—

“SCHEDULE A1  
PROTECTED NESTS AND NEST SITES: BIRDS

Common name	Scientific name
Eagle, White-tailed	Haliaeetus albicilla”.

**Commencement Information**

**I145** Sch. 6 para. 24 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

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25 After Schedule 1 insert—

“SCHEDULE 1A  
BIRDS WHICH ARE PROTECTED FROM HARASSMENT

Common name	Scientific name
Eagle, White-tailed	Haliaeetus albicilla”.

**Commencement Information**

**I146** Sch. 6 para. 25 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

- 26 (1) The Protection of Badgers Act 1992 is amended as follows.
- (2) In section 1 (taking, injuring or killing badgers)—
- (a) in subsection (1), the words “, or attempts to kill, injure or take,” are repealed,
  - (b) subsection (2) is repealed.
- (3) In section 3 (interfering with badger setts)—
- (a) the existing provision becomes subsection (1),
  - (b) after that provision insert—
 

“(2) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”
- (4) In section 6 (general exceptions from offences)—
- (a) in paragraph (a)—
    - (i) after “his” insert “ unlawful ”,
    - (ii) after “it” insert “ and releasing it when no longer disabled ”,
  - (b) in paragraph (b), for the words from “appears” to “mercy” substitute “ has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering ”.
- (5) In section 8 (exceptions from offence of interfering with badger setts)—
- (a) in subsection (1), for “3” substitute “ 3(1) or (2) ”,
  - (b) in subsection (3)—
    - (i) for “3(a)” substitute “ 3(1)(a) ”,
    - (ii) after “above” insert “ or an offence under section 3(2) above relating to an offence under section 3(1)(a), (c) or (e) above ”.
- (6) In section 9 (exceptions from offence of possessing or controlling live badger), in paragraph (b)—
- (a) after “his”, where first occurring, insert “ unlawful ”,
  - (b) after “it”, where second occurring, insert “ and releasing it when no longer disabled ”.
- (7) For section 11 substitute—

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## “11 Powers of constables

- (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant—
  - (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
  - (b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;
  - (c) arrest that person;
  - (d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.
- (2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.
- (3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.
- (4) A warrant under subsection (3) above continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
- (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.
- (6) A constable who enters any land in the exercise of a power conferred by this section—
  - (a) may—
    - (i) be accompanied by any other persons; and
    - (ii) take any machinery, other equipment or materials on to the land,  
for the purpose of assisting the constable in the exercise of that power;
  - (b) may take samples of any articles or substances found there and remove the samples from the land.
- (7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.

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*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

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- (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

- (8) After section 11 insert—

**“11A Attempts**

- (1) A person who attempts to commit an offence under this Act is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) A person who is in possession, for the purposes of committing an offence under this Act, of anything capable of being used for committing the offence is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) If, in any proceedings for an offence under section 1(1) above consisting of an attempt to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown.”

- (9) In section 12 (penalties etc.)—

- (a) in subsection (1)—

(i) for “2 or 3 above ” substitute “ 2(1)(d), 3(1)(a) to (c) or (e) above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(a) to (c) or (e) above) ”,

(ii) the word “4,” is repealed,

- (b) after subsection (1) insert—

“(1A) A person guilty of an offence under section 2(1)(a) to (c), 3(1)(d) or 4 above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both,

(b) on conviction on indictment to imprisonment for a term not exceeding three years or to a fine or both.”,

- (c) in subsection (2), after “(1)” insert “ or (1A)(a) ”.

- (10) After section 12 insert—

**“12A Time limit for bringing summary proceedings**

- (1) Summary proceedings for an offence under section 1(1), 2, 3, 5 or 10(8) of this Act may, subject to subsection (2) below, be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.

- (2) No such proceedings may be brought more than 3 years—

- (a) after the commission of the offence, or

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- (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

### **12B Offences by bodies corporate etc.**

- (1) Where an offence under this Act committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association, or
    - (ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46)."
- (11) In section 13 (power of court where dog used etc.), in subsection (1), for "3" substitute " 3(1) or (2) ".

#### **Commencement Information**

**I147** Sch. 6 para. 26 in force at 1.10.2004 by S.S.I. 2004/407, art. 2(b)

*Status: Point in time view as at 31/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 7

(introduced by section 57)

### MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

- 1 In Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation)—
- (a) for paragraphs (a) and (b) of the definition of “sensitive area” substitute—
    - “(a) land within a site of special scientific interest;
    - (b) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;”,
  - (b) in paragraph (k) of that definition, the words “as a natural heritage area under section 6(2) of the Natural Heritage (Scotland) Act 1991 or” are repealed.

#### Commencement Information

**I148** Sch. 7 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 2 (1) The Forestry Act 1967 is amended as follows.
- (2) In section 10(2) (decisions of Forestry Commissioners on felling licences)—
- (a) the word “or” at the end of paragraph (a) is repealed,
  - (b) after paragraph (b) insert “; or
  - (c) for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land.”
- (3) In section 12 (conditions attached to felling licences)—
- (a) in subsection (1), for “10(2)” substitute “ 10(2)(a) or (b) ”,
  - (b) in subsection (2), after “imposed” insert “ under section 10(2)(a) or (b) above ”.

#### Commencement Information

**I149** Sch. 7 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 3 In section 10 of the Conservation of Seals Act 1970 (power to grant licences to kill or take seals), in subsection (4)—
- (a) for paragraphs (b) and (c) substitute—
    - “(b) is a site of special scientific interest;
    - (c) is an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect; or”,
  - (b) in paragraph (d), for “that Act” substitute “ the Wildlife and Countryside Act 1981 ”.

#### Commencement Information

**I150** Sch. 7 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

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- 4 Sections 28 to 34, 41, 50, 51 and 74(5A) of, and Schedule 11 to, the 1981 Act are repealed.

**Commencement Information**

**I151** Sch. 7 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 5 In section 22(1)(b) (traffic regulation for special areas in the countryside) of the Road Traffic Regulation Act 1984, sub-paragraph (iii) is repealed.

**Commencement Information**

**I152** Sch. 7 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 6 Section 9(7) of the Channel Tunnel Act 1987 is repealed.

**Commencement Information**

**I153** Sch. 7 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 7 In section 36(7) (requirement to consult SNH before issuing waste management licence) of the Environmental Protection Act 1990, for the words from “land”, where it second occurs, to “areas)” substitute “ within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect ”.

**Commencement Information**

**I154** Sch. 7 para. 7 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 8 Sections 6 (Natural Heritage Areas) and 12 (Advisory Committee on SIs) of the Natural Heritage (Scotland) Act 1991 are repealed.

**Commencement Information**

**I155** Sch. 7 para. 8 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 9 In section 1(7) (determination by Court of Session of point of law) of the Scottish Land Court Act 1993, after “enactment” there is inserted “ , or under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6), ”.

**Commencement Information**

**I156** Sch. 7 para. 9 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 10 (1) Section 35 (duties of SEPA in relation to Natural Heritage Areas and sites of special interest) of the Environment Act 1995 is repealed.
- (2) In section 36 (codes of practice) of that Act—
- (a) in subsection (1)(a), for “, 34(2) and 35” substitute “ and 34(2) ”,

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- (b) in subsection (2), for “, 34(2) or 35” substitute “ or 34(2) ”.

**Commencement Information**

**I157** Sch. 7 para. 10 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 11 In schedule 3 (penalties for offences relating to deer) to the Deer (Scotland) Act 1996, after the entry for section 17(2) insert—

“17(3)	Killing or injuring deer otherwise than by shooting	a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both	”.
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**Commencement Information**

**I158** Sch. 7 para. 11 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 12 (1) In section 54(1) (land which may not be included in simplified planning zone) of the Town and Country Planning (Scotland) Act 1997, for paragraph (d) substitute—
- “(d) land in a site of special scientific interest;
- (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;”.
- (2) Section 264 (Natural Heritage Areas) is repealed.

**Commencement Information**

**I159** Sch. 7 para. 12 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 13 In section 54 (protection of natural heritage) of the Water Industry (Scotland) Act 2002—
- (a) in subsection (1), for “protected area” substitute “ European site within the meaning of Regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) ”,
- (b) subsection (2) is repealed,
- (c) in subsection (3)—
- (i) paragraphs (a) and (b), and
- (ii) the words “in the case of an area mentioned in subsection (2)(c),” in paragraph (c),
- are repealed,
- (d) in subsection (4)—
- (i) for “protected area” substitute “ European site ”,



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(ii) the words from “was” to “be,” are repealed.

**Commencement Information**

**I160** Sch. 7 para. 13 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

**Status:**

Point in time view as at 31/10/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004.