

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 1 – Sites of Special Scientific Interest

Notification of sites of special scientific interest

Section 6 Review of operations requiring consent

50. This section regulates any review of the ORCs listed in an SSSI notification. The times at which the process of review and revision can be carried out are subject to the constraints which are set out in subsections (1) and (2).
51. Subsection (1) gives SNH the power to review the ORC list when it thinks fit and obliges it also to do so on the request of any owner or occupier of the site. Subsection (2), however, limits the ability of SNH to carry out such a review more frequently than every 6 years, unless it has first obtained the consent of every owner or occupier. Thus, SNH can neither initiate reviews nor be obliged to carry out a review by an owner or occupier outwith the 6 year cycle, unless it has secured agreement from the owners and occupiers of the land affected.
52. Subsection (2) should be read in conjunction with the transitional provisions in paragraphs 3(a) and 5 of Schedule 5. These define the date on which the first 6 year period commences in relation to existing SSSIs and make special arrangements allowing SNH to conduct a structured programme of review of ORC lists during that initial 6 year period. SNH has been specifically tasked by the Scottish Ministers with reviewing those ORC lists which have been derived (as a consequence of paragraph 3(b) of schedule 5) from the PDO (“potentially damaging operations”) lists used for SSSIs under the 1981 Act. That review is to be undertaken in line with the policy that the new ORC lists should be more closely targeted and should deal with credible potential threats to the site, rather than (as has tended to happen in the past) simply listing all activities which might, theoretically, damage the site. Reserve powers exist, in section 7 and by using nature conservation orders, to cover the rare situations where activities which are genuinely detrimental to the SSSI interest have not been listed on an ORC list.
53. The 6 year period between ORC reviews reflects the existing site condition monitoring programme, which assesses the conservation status and condition of natural features across the SSSI series. It is this programme which yields the principal data which are required to inform a major review of the ORC list. There is nothing however to prevent more frequent reviews where there is mutual agreement between SNH and the owners and occupiers of the site that it would be sensible to do so.

*These notes relate to the Nature Conservation (Scotland) Act
2004 (asp 6) which received Royal Assent on 11 June 2004*

54. Subsection (3) specifies that agreement to a review is given by owners and occupiers where *either* every owner and occupier explicitly consents *or* no reasonable objection to the proposal is received within 28 days. Where there are multiple owners and occupiers on a site and one individual seeks, without good cause, to block a review for which there is clear majority support amongst other owners and occupiers, it is unlikely that this will be regarded by SNH as a “reasonable objection”.
55. Subsection (4) enables SNH, in carrying out a review of the list of ORCs, also to review existing consents which it has given under section 16 of the Act allowing operations specified on the ORC list to be carried out. This is because a review of the ORC list may substantially alter that list and the detail of the particular operations specified in it, in order to ensure the protection of the site. Since ORC consents work, in practice, to modify the effect of the ORC list, it would be difficult to review that list without also considering the implications of existing consents. SNH may consider it would also be undesirable for consents to remain in place where it is clear that the operation is damaging the site and the consent is no longer consistent with the entry on the ORC list to which the consent originally related. Section 16 makes provision for the subsequent modification or revocation of ORC consents following a review under section 6(4).
56. Subsection (5) provides that SNH must amend the ORC list for any site where, on completion of an ORC review, it is of the opinion that operations should be added to or removed from the list or where it believes that an existing entry should be modified.