

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

Operations affecting sites of special scientific interest

Section 14 Operations by public bodies etc.: authorised operations

102. Subsection (1) sets out details of the situations in which SNH consent to an operation is not required by a public body. These are effectively situations in which consent has already been given via another route, or where action is necessary in an emergency. The particular circumstances are where:
- permission has already been given by a regulatory authority under section 15. The regulator is obliged under section 15 to have regard to SNH advice before giving permission and this subsection obviates the need for SNH to give separate permission for the operation. SNH consent is contained within the regulatory permission;
 - explicit planning permission has been granted. Again, SNH advice is taken into account by the planning authority and separate permission from SNH for the operation is not required by this subsection. It should be noted that this exemption applies only to the explicit grant of planning permission and does not remove the need to obtain SNH permission for an operation undertaken as a permitted development for which planning permission is not needed;
 - an operation is carried out in order to deal with an emergency situation. This exemption can only be invoked where SNH is informed as soon as possible after the need for the emergency operation becomes clear;
 - an operation is carried out in accordance with a management agreement between SNH and the public body. In concluding the agreement SNH will have consented to the operation; and
 - an operation is carried out in accordance with some other, formally-agreed plan for the management of land which has been approved in writing by SNH. For example, a forest management plan setting out a programme for forestry operations and land management activity over an extended period of time. The operations specified within such a management plan could be consented to in advance by SNH if it were to decide to approve the plan and gave such approval in writing.
103. Subsection (2) allows public bodies to proceed with an operation, in certain closely defined circumstances, even where SNH has refused consent or has imposed conditions

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

which are unacceptable to the public body. But it may only do so where all of the conditions set out in subsection (3) have been met. It should be noted that failure by SNH to take a decision within 28 days in response to an application under section 13(3) is deemed to be a refusal of consent and the provisions of this subsection would therefore apply.

104. Subsection (3) sets out the conditions which have to be met if a public body intends to proceed with an operation in the face of SNH opposition. The conditions are that:
- no action can be taken until the 28 day period for consideration of the original application has expired;
 - notice must be given to SNH of the proposed start date for the operation;
 - that start date cannot be less than 28 days from the date on which notice of the intention to proceed with the operation is given;
 - the notice given to SNH must set out what the public body has done, or proposes to do, in response to any advice which may have been received from SNH in relation to the operation;
 - the operation must be carried out in a manner which causes as little damage or disturbance to the natural feature specified in the SSSI notification as is reasonably possible in all the circumstances;
 - in seeking to avoid damaging or disturbing that feature the public body must have regard to any advice received from SNH; and
 - the public body must comply with its general duty in relation to SSSIs and the SSSI series, as set out in section 12(2)(c).
105. Subsections (4) and (5) govern certain situations in which a public body proceeds with an operation and that operation causes damage to a protected natural feature. The situations in question are where the operation has been carried out on the basis of permission from a relevant regulatory authority, where it is an emergency operation and where it has been carried out in the face of a refusal of consent from SNH or where conditions imposed by SNH have been set aside. In these cases, the public body is obliged to consult with SNH on how best to restore the damaged feature and it must, so far as is reasonably practicable, then carry out that restoration work in accordance with SNH advice. Failure to do so is a criminal offence under section 19.