

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – General

Schedule 7 - Minor and consequential amendments and repeals

448. This Schedule makes minor and consequential changes to a variety of existing statutes. Many of the changes reflect the need to replace existing references to SSSIs and NCOs in other legislation with appropriate references to the new provisions in the Act.
449. Paragraph 1 amends paragraph 1(a) and (b) of Schedule 3 of the [Harbours Act 1964 \(c.40\)](#), which relates to the procedure for making harbour revision and empowerment orders. References to SSSIs, NCOs and LMOs under the Act are inserted. The repeal of natural heritage areas (by paragraph 8 of schedule 7) is also reflected.
450. Paragraph 2 amends the [Forestry Act 1967 \(c.10\)](#). Section 10 of the 1967 Act (application for felling licence and decision of the Commissioners thereon) is amended to insert a new paragraph (c) in section 10(2). The effect of this amendment is to empower the Forestry Commissioners to grant a felling licence subject to conditions when it appears to them to be expedient to do so for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land. Paragraph 2 also amends section 12 of the 1967 Act (conditional licences). The effect of the amendment is to apply the restrictions on conditions which may be attached to a felling licence under section 12(1) to conditions where the Commissioners consider it expedient to attach conditions under section 10(2) (a) and (b). The amendment also has the effect of restricting the prohibition on imposing conditions on the grant of a felling licence where the licence is for trees on land subject to a forestry dedication covenant to conditions imposed under section 10(2)(a) or (b). As a result there are no statutory restrictions on the conditions which may be attached to a felling licence for nature conservation purposes.
451. Paragraph 3 amends section 10(4)(b), (c) and (d) of the [Conservation of Seals Act 1970 \(c.30\)](#), which confers a power to grant licences to kill or take seals. References to SSSIs and to NCOs are updated to reflect the provisions of the new Act.
452. Paragraph 4 repeals sections 28 to 34, 41, 50, 51, and 74(5A), as well as Schedule 11, of the [Wildlife & Countryside Act 1981 \(c.69\)](#). This has the effect of removing all existing SSSI and NCO provisions from Part II of the 1981 Act, together with associated provisions. The provisions retained in Part II include provisions relating to National Nature Reserves and Marine Nature Reserves.
453. Paragraph 5 repeals section 22(1)(b)(iii) of the [Road Traffic Regulation Act 1984 \(c.27\)](#).
454. Paragraph 6 repeals section 9(7) of the [Channel Tunnel Act 1987 \(c.53\)](#).

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

455. Paragraph 7 amends section 36(7) of the [Environmental Protection Act 1990 \(c.43\)](#), which creates the requirement to consult SNH before issuing waste management licences. References to SSSIs and NCOs are updated in line with the provisions of the new Act and a new reference to LMOs is inserted.
456. Paragraph 8 repeals sections 6 and 12 of the Natural Heritage (Scotland) Act 1991. These repeals have the effect of repealing current legislative provision for Natural Heritage Areas (a designation which has never in fact been used) and existing references in the 1991 Act to the Advisory Committee on SSSIs. The provisions covering the Advisory Committee have been removed from the 1991 Act and analogous provisions are now to be found in section 21 and Schedule 1 of the new Act.
457. Paragraph 9 amends section 1(7) of the [Scottish Land Court Act 1993 \(c.45\)](#), which relates to the determination by the Court of Session on a point of law. This amendment ensures that where a matter has been put to the Scottish Land Court under the provisions of the new Act the Court can state a case to the Inner House of the Court of Session on a point of law. The Land Court may do so on its own motion and must do so if asked by a party to proceedings. This means that the parties and the Court have access to the supreme civil court in Scotland in order to resolve, if necessary, any significant and difficult legal issues which may arise in the course of proceedings. The specific reference to the new Act is necessary because the term “enactment” does not, in this context, cover Acts of the Scottish Parliament.
458. Paragraph 10 amends the [Environment Act 1995 \(c.25\)](#) to reflect the new arrangements brought into effect by the new Act. References to Natural Heritage Areas are repealed in line with the change effected in paragraph 8 of this schedule.
459. Paragraph 11 amends the [Deer \(Scotland\) Act 1996 \(c.58\)](#). The amendment inserts into Schedule 3 to the 1996 Act (penalties for offences relating to deer) a penalty applicable to an offence under section 17(3) of the 1996 Act. It is an offence under 17(3) of the 1996 Act to kill or injure a deer by a method other than shooting. The effect of the amendment is that a person found guilty of an offence under section 17(3) is liable to a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or three months imprisonment or both.
460. Paragraph 12 amends section 54(1) of the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#), which relates to land which it is not permissible to include in a simplified planning zone. References to Natural Heritage Areas are repealed, in line with the provisions of paragraph 8 of this schedule.
461. Paragraph 13 amends section 54 of the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), primarily by removing redundant references to the protection of SSSIs. The new Act makes improved alternative arrangements in this connection, including via sections 1 and 12 to 15 of the Act.