Nature Conservation (Scotland) Act 2004

2004 asp 6

PART 2

CONSERVATION AND ENHANCEMENT OF NATURAL FEATURES

CHAPTER 4

GENERAL AND SUPPLEMENTARY

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,

(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.

(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.