

POLICY NOTE

THE NATURE CONSERVATION (SCOTLAND) ACT 2004 (AUTHORISED OPERATIONS) ORDER 2016

SSI 2016/38

This Order (“the 2016 Order”) is made in exercise of the powers conferred by sections 14(1)(f) and 17(1)(f) of the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”) and all other powers enabling the Scottish Ministers to do so. The Order is subject to the negative procedure.

Policy Objectives

The Wildlife and Natural Environment (Scotland) Act 2011 (“the 2011 Act”) provided for a number of improvements to the system governing Sites of Special Scientific Interest (SSSIs) in Scotland. One of these related to a proposal to extend the list of situations in which a separate consent is not required from Scottish Natural Heritage (SNH) for SSSI operations which are carried out in fulfilment of activities already approved by SNH with a government department, agency or NDPB, the intended purpose being to reduce unnecessary bureaucratic burden for both SNH and SSSI owner/occupiers and land managers (without any additional risk to SSSIs).

Section 39 (3)(a)(iii) and (4)(a)(iii) of the 2011 Act amended sections 14 and 17 (respectively) of the 2004 Act by adding to the list of situations where SNH consent is not required for certain operations if that operation is of a type described by Order made by the Scottish Ministers. The Nature Conservation (Scotland) Act 2004 (Authorised Operations) Order 2011 (“the 2011 Order”) is such an Order. However, revision was recently required to accommodate activities undertaken under the Rural Development (Scotland) Regulations 2015 and rather than amend the 2011 Order, we are taking this opportunity to provide greater specificity of the types of land management activity which are exempt (and which are now listed in the 2016 Order in a Schedule) and are therefore replacing the 2011 Order in its entirety. In doing so, we are dispensing with the exemption provided in the 2011 Order for licences granted by SNH under section 16 of the Wildlife and Countryside Act 1981 because SNH has advised that this exemption is largely redundant (noting that the facility for land managers to apply for such licences on a case by case basis remains).

As per the 2011 Order, the 2016 Order lists authorised operations (in article 2 (2) (a) to (c)) where separate SNH consent is not required. In each case, SNH is either the licensing authority or is consulted under a separate procedure associated with the operation. The result is that many consents for operations on SSSIs will continue to be streamlined for both SNH and land managers without any risk of damage to Scotland’s nationally important network of SSSIs.

Consultation & Business and Regulatory Impact Assessment (BRIA)

Consultation was undertaken in advance of the introduction of the Wildlife and Natural Environment Bill to the Scottish Parliament and received majority support. A BRIA has not been produced as the changes will result in no additional costs, only savings (as outlined in the Financial Memorandum submitted at Bill stage during the passage of the 2011 Act).

Public Sector Equality Duty

Public sector equality duties have been considered in relation to this order and an assessment is not considered necessary.

Scottish Government
Directorate for Environment and Forestry

18 January 2016