

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 2 -Nature Conservation Orders *Schedule 2*

Nature conservation orders and related orders: procedure

Application of schedule

185. Paragraph 1 clarifies that this Schedule applies to NCOs and to any amending orders and revoking orders which affect NCOs.

Consultation

186. Paragraph 2 requires the Scottish Ministers to consult SNH in relation to any proposed NCO, amending order or revoking order before making it. The Scottish Ministers must have regard to any representations made by SNH before they make the order.

Notification

187. Paragraph 3 requires the Scottish Ministers to give notice of the making of an order under this section as soon as practicable after making it. Notice must be given to the interested parties (see section 48(2)). The notice must also be publicised in at least one relevant local newspaper and by such other means (including the internet) as the Scottish Ministers think fit.
188. Paragraph 4 provides that a notice under paragraph 3 must set out the order or describe its general effect. The notice must also state whether the order has taken effect. This paragraph also provides that, where the notice does not set out the order, it must specify where a copy of the order may be inspected free of charge and at all reasonable hours and how to obtain a copy of the order. Finally, sub-paragraph 4(c) provides that the notice must, where it relates to an NCO or amending order, specify the period during which and how representations may be made about the order. This sub-paragraph establishes that the period for such representations must be at least 3 months from the date on which the notice was given. This minimum period for representations is the same as that specified for representations in relation to the notification of SSSIs in Schedule 1.

Confirmation of orders

189. Paragraph 5 requires the Scottish Ministers to decide either to confirm or not to confirm an order to which this Schedule applies (i.e. an NCO, amending order or revoking order) within one year of the date on which the order is made. They must do so only after

having considered any representations and after having considered any report which may have been submitted by a person appointed under paragraph 10 for the purposes of holding an enquiry or hearing representations. The period within which confirmation must take place may be extended by agreement, in accordance with paragraph 12.

190. Paragraphs 6 and 7 provide that the Scottish Ministers are entitled to make modifications to the order prior to confirmation and they may confirm an order which has been modified. Where modifications are made, however, any changes must be detailed in the notice of confirmation required under paragraph 8. The modifications which are made cannot have the effect of extending the area of land covered by the NCO.
191. Paragraph 8 requires the Scottish Ministers to give notice of their decision to confirm or not to confirm an order as soon as practicable after making that decision. Notice of this decision must be given to the interested parties and publicised in accordance with the notice requirements set out in paragraph 3.
192. Paragraph 9 provides that any modifications to an order will have effect as soon as notice of confirmation of the order in its modified form is given by the Scottish Ministers in accordance with paragraph 8.

Inquiry or other opportunity to be heard

193. Paragraph 10 provides that the Scottish Ministers must either cause a local inquiry to be held or appoint a person to hear representations if representations in relation to the order have been made within the period allowed for the lodging of representations and the representations are not subsequently withdrawn.
194. Paragraph 11 requires that any local inquiry, to be held as a consequence of paragraph 10, should be conducted in accordance with the relevant provisions of section 210 of the [Local Government \(Scotland\) Act 1973 \(c.65\)](#).

Extension of period

195. Paragraph 12 ensures that the Scottish Ministers may only extend, or further extend, the period in which an NCO must be confirmed with the express agreement of every owner and occupier to which the order relates. The period of time must be agreed by all parties and agreement is to be obtained in accordance with paragraph 13.
196. Paragraph 13 specifies that agreement to extend the period in which an NCO must be confirmed is obtained if the Scottish Ministers give notice of the proposed extension to every owner and occupier of the land to which the order relates and either every owner and occupier consents to the extension, or no reasonable objection is received within 28 days. This latter arrangement allows for extension in situations where either no-one feels strongly enough to bother responding or where a minority or respondents seek to block the extension for petty reasons in a way which is, for example, at odds with the clear desire of the majority of owners and occupiers.
197. Paragraph 14 requires the Scottish Ministers to notify the interested parties if they do extend or further extend the period within which an NCO must be confirmed.

Recording or registration of orders

198. Paragraph 15 requires that any order made under this Schedule and any notice given by the Scottish Ministers to confirm or not to confirm an NCO or amending order, be recorded in the General Register of Sasines or registered in the Land Register of Scotland, whichever is appropriate at the time of registration. All existing NCOs under the 1981 Act have been recorded or registered in the same way.