

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conservation and Enhancement of Natural Features

Chapter 3 - Land Management Orders *Schedule 3*

Land Management Orders and Related Orders: Procedure

Notification of proposals for land management order

224. Paragraphs 1 to 5 of the Schedule specify the procedure SNH must follow when notifying a proposal for a land management order to the Scottish Ministers under section 29(2).
225. Paragraph 1 requires SNH to provide a copy of its LMO proposal, and the accompanying map, to every owner and occupier of land to which the proposal relates. SNH must also give notice to every other interested party (for the definition of “interested party” see section 48(2)) explaining the general effect of the proposed LMO. Details of all the interested parties (including the owners and occupiers) must be supplied to the Scottish Ministers, together with such other supplementary information as SNH believes appropriate.
226. Paragraph 2 obliges SNH to publicise the proposal in at least one relevant local newspaper and to use such other media for publicising the proposal (including the internet) as it thinks appropriate in the circumstances.
227. Paragraph 3 requires a notification under paragraph 1 or 2 to specify where a copy of the proposal and accompanying map can be inspected free of charge and obliges SNH to explain how members of the public may obtain a copy of the proposal and map at a reasonable cost. The notification must also specify how representations about the proposal can be made to the Scottish Ministers.
228. Paragraph 4 specifies that representations in relation to the LMO proposal must be made to the Scottish Ministers within 3 months of the date on which the interested parties were informed of the proposal. That period may be extended under the terms of paragraph 5.
229. Paragraph 5 sets out arrangements by which the Scottish Ministers may extend the period during which representations may be made under paragraph 4. They may do so of their own accord or on the application of any person. The period may be extended for a maximum of a further 3 months and the extension can be effected at any time during the initial 3 month period. The extension is effected by giving notice to the owners and occupiers who received copies of the proposal and to the other interested parties.

Power to require disclosure of information

230. Paragraph 6 enables the Scottish Ministers to require SNH or any person to whom SNH has given notice of the LMO proposal, to disclose additional information. It also confers the power on the Scottish Ministers to specify the time and place as well as the form and manner in which such information should be made available to them.
231. Paragraph 7 limits the requirement to disclose information so as to exclude anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
232. Paragraphs 8 and 9 provide that any failure or refusal to comply with a notice under paragraph 6 requiring the disclosure of information, or any alteration, suppression or destruction of such information, will constitute an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale. A defence of reasonable excuse may be advanced in relation to a failure to comply with a notice under paragraph 6.

Withdrawal of proposal

233. Paragraph 10 allows SNH to withdraw a proposal to the Scottish Ministers under section 29(2) at any time prior to the making of an LMO. If SNH decides so to do, it must take action before the Scottish Ministers make any decision on the application and it must notify each person to whom it originally gave notice under paragraph 1.

Notification of decision on orders

234. Where the Scottish Ministers decide to make, amend or revoke an LMO, paragraph 11 requires them to publish that decision in at least one relevant local newspaper and through any other medium (including via the internet) which they believe to be appropriate in the circumstances.
235. Paragraph 12 makes it clear that notice of any decision must also be given to the interested parties (including any owners and occupiers affected by the order).
236. Paragraph 13 sets out the information which must be provided in any notice of a decision made in relation to an LMO. The Scottish Ministers must specify their reasons for reaching the decision, set out the extent of any differences between the final order and the original SNH proposal, detail any amendments made (if the order amends an existing LMO) and explain the circumstances in which an appeal may be made against their decision to the Scottish Land Court. These provisions are intended to ensure the transparency and openness of decision-making and to enable any aggrieved party to challenge the LMO in an informed and effective manner.

Recording or registration of orders

237. Paragraph 14 requires any LMO, amending order or revoking order to be recorded in the General Register of Sasines or registered in the Land Register of Scotland, whichever is appropriate at that particular time in relation to the area of land concerned. The practice of recording or registering orders reflects similar arrangements in relation to NCOs and ensures that the existence of any LMO is apparent to anyone who searched the relevant register.