

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – General

Section 53 Orders and regulations: general

427. This section makes procedural provision for orders and regulations made under the Act.
428. Subsection (1) specifies that orders and regulations are to be made as statutory instruments. This does not, however, apply to NCOs, LMOs, or orders amending or revoking NCOs and LMOs. These orders are subject to their own detailed procedures which are set out in Part 2 of the Act and in Schedules 2 and 3.
429. Subsection (2) allows such statutory instruments to make such incidental, supplemental, consequential, transitional, transitory or saving provision as is considered necessary or expedient by the Scottish Ministers and can make different provisions for different purposes in different areas.
430. Subsection (3) supplements the powers conferred on the Scottish Ministers by section 56 by providing that an order under that section can modify any enactment, instrument or document. The power in section 56 allows the Scottish Ministers to make an order specifying such incidental, supplemental, consequential, transitional, transitory or saving provisions as they consider necessary expedient of the purposes or in consequence of the Act.
431. Subsection (4) provides that the majority of statutory instruments made under the Act are to be subject to annulment in pursuance of a resolution of the Parliament (i.e. they will take effect unless the Scottish Parliament specifically votes to annul them). An exception to this general rule applies in relation to orders under section 56 (where the order contains provisions which add to, replace or omit any part of the text of an Act). In this particular case, an order may not be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament (i.e. the order will not take effect unless specifically approved by the Scottish Parliament).
432. An exception is also made in sub-section (4) in relation to Commencement Orders made under section 59. Commencement Orders are not subject to Parliamentary procedure. They take effect without any requirement for parliamentary approval.