

Changes to legislation: There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004, SCHEDULE 4. (See end of Document for details)

SCHEDULE 4 **S**

(introduced by section 44)

POWERS OF ENTRY OF AUTHORISED PERSONS: FURTHER PROVISION

- 1 (1) A person authorised under section 44 to enter any land may not demand admission as of right to any land which is occupied unless—
- (a) the entry is for the purpose mentioned in subsection (1)(f) of that section,
 - (b) the entry is for the purpose mentioned in subsection [F1 (1)(bb), (h)] or (k) of that section and at least 14 days' notice of the intended entry has been given, or
 - (c) the entry is for any other purpose mentioned in subsection (1) or (2) of that section and at least 24 hours' notice of the intended entry has been given.
- (2) Any such notice must be given to the occupier and, where practicable, to the owner of the land.

Textual Amendments

- F1** Words in Sch. 4 para. 1(1)(b) substituted (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), ss. 40(1)(e), 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(q)

Commencement Information

- II** Sch. 4 para. 1 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by SNH or, as the case may be, the Scottish Ministers to enter any land (other than a dwelling or lockfast premises) for any of the purposes mentioned in section 44(1) and (2) and that—
- (a) admission to the land has been refused,
 - (b) such refusal is reasonably apprehended,
 - (c) the land is unoccupied,
 - (d) the occupier is temporarily absent from the land, or
 - (e) an application for admission to the land would defeat the object of the proposed entry,
- the sheriff or justice may grant a warrant authorising the person to enter the land, if necessary using reasonable force.
- (2) A sheriff or justice must not grant a warrant under sub-paragraph (1) by virtue only of being satisfied that a condition specified in sub-paragraph (1)(a) or (b) is fulfilled unless the sheriff or justice is satisfied that—
- (a) notice of the intended entry has been given in accordance with sub-paragraph (1)(b) or (c) of paragraph 1, or
 - (b) such notice is not, by virtue of sub-paragraph (1)(a) of that paragraph, required.
- (3) A warrant under this schedule continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

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Commencement Information

I2 Sch. 4 para. 2 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 3 A person authorised under section 44 or by a warrant granted under this schedule to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the person's authority.

Commencement Information

I3 Sch. 4 para. 3 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 4 (1) A person who enters any land in the exercise of any power conferred by section 44—
- (a) may—
 - (i) be accompanied by any other persons, and
 - (ii) take any machinery, other equipment or materials on to the land,
 for the purpose of assisting the person in the exercise of that power,
 - (b) take samples of any articles or substances found there and remove the samples from the land.
- (2) A power specified in sub-paragraph (1)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

Commencement Information

I4 Sch. 4 para. 4 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 5 A person leaving any land which has been entered in exercise of a power conferred by section 44, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the person found it.

Commencement Information

I5 Sch. 4 para. 5 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

- 6 (1) SNH or, as the case may be, the Scottish Ministers must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by SNH or, as the case may be, the Scottish Ministers of any powers conferred on the person by section 44, or
 - (b) the failure of a person so authorised to perform the duty imposed by paragraph 5,
- unless the damage is attributable to the fault of the person who sustained it.
- (2) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of such compensation, is to be determined by arbitration.

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Commencement Information

I6 Sch. 4 para. 6 in force at 29.11.2004 by S.S.I. 2004/495, art. 2

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